OPENING ARGUMENT

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ONE OF THE MANAGERS

ON THE

IMPEACHMENT OF THE PRESIDENT.

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Mr. President and Gentlemen of the Senate:

The onerous duty has fallen to my fortune to present to you, imperfectly as I must, the several propositions of fact and law upon which the House of Representatives will endeavor to sustain the cause of the people against the President of the United States, now pending at your bar.

The high station of the accused, the novelty of the proceeding, the gravity of the business, the importance of the questions to be presented to your adjudication, the possible momentous result of the issues, each and all must plead for me to claim your attention for as long a time as your patience may endure.

Now, for the first time in the history of the world, has a nation brought before its highest tribunal its chief executive magistrate for trial and possible deposition from office, upon charges of maladministration of the powers and duties of that office. In other times, and in other lands, it has been found that despotisms could only be tempered by assassination, and nations living under constitutional governments even, have found no mode by which to rid themselves of a tyrannical, imbecile, or faithless ruler, save by overturning the very foundation and frame-work of the government itself. And, but recently, in one of the most civilized and powerful governments of the world, from which our own institutions have been largely modeled, we have seen a nation submit for years to the rule of an insane king, because its constitution contained no method for his removal.

Our fathers, more wisely, founding our government, have provided for such and all similar exigencies a conservative, effectual, and practical remedy by the constitutional provision that the "President, Vice-President, and all civil officers of the United States *shall* be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors." The Constitution leaves nothing to implication, either as to the persons upon whom, or the body by whom, or the tribunal before which, or the offences for which, or the manner in which this high power should be exercised; each and all are provided for by express words of imperative command.

The House of Representatives shall solely impeach; the Senate only shall try; and in case of conviction the judgment shall alone be removal from office and disqualification for office, one or both. These mandatory provisions became necessary to adapt a well known procedure of the mother country to the institutions of the then infant republic. But a single incident only of the business was left to construction, and that concerns the offences or incapacities which are the groundwork of impeachment. This was wisely done, because human foresight is inadequate, and human intelligence fails in the task of anticipating and providing for, by positive enactment, all the infinite gradations of human wrong and sin, by which the liberties of a people and the safety of a nation may be endangered from the imbecility, corruption and unhallowed ambition of its rulers.

It may not be uninstructive to observe that the framers of the Constitution, while engaged in their glorious and, I trust, ever-enduring work, had their attention aroused and their minds quickened most signally upon this very topic. In the previous year only Mr. Burke, from his place in the House of Commons in Eng-

land, had preferred charges for impeachment against Warren Hastings, and three days before our convention sat he was impeached at the bar of the House of Lords for misbehavior in office as the ruler of a people whose numbers were counted by millions. The mails were then bringing across the Atlantic, week by week, the eloquent accusations of Burke, the gorgeous and burning denunciations of Sheridan, in behalf of the oppressed people of India, against one who had wielded over them more than regal power. May it not have been, that the trial then in progress was the determining cause why the framers of the Constitution left the description of offences, because of which the conduct of an officer might be inquired of, to be defined by the laws and usages of Parliament as found in the precedents of the mother country, with which our fathers were as familiar as we are with our own?

In the light, therefore, of these precedents, the question arises, *What are impeachable offences* under the provisions of our Constitution?

To analyze, to compare, to reconcile these precedents, is a work rather for the closet than the forum. In order, therefore, to spare your attention, I have preferred to state the result to which I have arrived, and that you may see the authorities and discussions, both in this country and in England, from which we deduce our propositions, so far as applicable to this case, I pray leave to lay before you, at the close of my argument, a brief of all the precedents and authorities upon this subject, in both countries, for which I am indebted to the exhaustive and learned labors of my friend, the honorable William Lawrence, of Ohio, member of the Judiciary Committee of the House of Representatives, in which I fully concur and which I adopt.

We define, therefore, an impeachable high crime or misdemeanor to be *one in its nature or consequences subversive of some fundamental or essential principle of government, or highly prejudicial to the public interest, and this may consist of a violation of the Constitution, of law, of an official oath, or of duty, by an act committed or omitted, or, without violating a positive law, by the abuse of discretionary powers from improper motives, or for any improper purpose.*

The first criticism which will strike the mind on a cursory examination of this definition is, that some of the enumerated acts are not within the common-law definition of crimes. It is but common learning that in the English precedents the words "high crimes and misdemeanors" are universally used; but any malversation in office, highly prejudicial to the public interest, or subversive of some fundamental principle of government by which the safety of a people may be in danger, is a high crime against the nation, as the term is used in parliamentary law.

Hallam, in his Constitutional History of England, certainly deduces this doctrine from the precedents, and especially Lord Danby case, 11 State Trials, 600, of which he says:

> The Commons, in impeaching Lord Danby, went a great way towards establishing the principle that no minister can shelter himself behind the throne by pleading obedience to the orders of his sovereign. He is answerable for the *justice, the honesty, the utility of all measures emanating* from the Crown, as well as for their *legality*; and thus the executive administration is, or ought to be, subordinate in all great matters of policy to the superintendence and virtual control of the two houses of Parliament.

Mr. Christian, in his notes to the Commentaries of Blackstone, explains the collocation and use of the words "high crimes and misdemeanors" by saying:

> When the words "high crimes and misdemeanors" are used in prosecutions by impeachment, the words "high crimes" have no definite signification, but are used merely to give greater solemnity to the charge.

A like interpretation must have been given by the framers of the Constitution, because a like definition to ours was in the mind of Mr. Madison, to whom more than to any other we are indebted for the phraseology of our Constitution, for, in the first Congress, when *discussing* the power to remove an officer by the

President, which is one of the very material questions before the Senate at this moment, he uses the following words:

> The danger consists mainly in this: that the President can displace from office a man whose merits require he should be continued in it. In the first place, he will be impeachable by the House for such an act of maladministration, for I contend that the wanton removal of meritorious officers would subject him to impeachment and removal from his own high trust.

Strengthening this view, we find that within ten years afterwards impeachment was applied by the very men who framed the Constitution to the acts of public officers, which under no common-law definition could be justly called crimes or misdemeanors, either high or low. Leaving, however, the correctness of our proposition to be sustained by the authorities we furnish, we are naturally brought to the consideration of the method of the procedure, and the nature of the proceedings in cases of impeachment, and the character and powers of the tribunal by which high crimes and misdemeanors are to be adjudged or determined.

One of the important questions which meets us at the outset is: Is this proceeding a trial, as that term is understood, so far as relates to the rights and duties of a court and jury upon an indictment for crime? Is it not rather more in the nature of an inquest of office?

The Constitution seems to have determined it to be the latter, because, under its provisions the right to retain and hold office is the only subject that can be finally adjudicated; all preliminary inquiry being carried on solely to determine that question and that alone.

All investigations of fact are in some sense trials, but not in the sense in which the word is used by courts.

Again, as a correlative question:

Is this body, now sitting to determine the accusation of the House of Representatives against the President of the United States, the Senate of the United States, or a Court?

I trust, Mr. President and Senators, I may be pardoned for making some suggestions upon these topics, because to us it seems these are questions not of forms, but of substance. If this body here is a Court in any manner as contradistinguished from the Senate, then we agree that many if not all the analogies of the procedures of courts must obtain; that the common-law incidents of a trial in court must have place; that you may be bound in your proceedings and adjudication by the rules and precedents of the common or statute law; that the interest, bias, or preconceived opinions or affinities to the party, of the judges, may be open to inquiry, and even the rules of order and precedents in courts should have effect; that the managers of the House of Representatives must conform to those rules as they would be applicable to public or private prosecutors of crime in courts, and that the accused may claim the benefit of the rule in criminal cases, that he may only be convicted when the evidence makes the fact clear beyond reasonable doubt, instead of by a preponderance of the evidence.

We claim and respectfully insist that this Tribunal has none of the attributes of a judicial Court as they are commonly received and understood. Of course, this question must be largely determined by the express provisions of the Constitution, and in it there is no word, as is well known to you, Senators, which gives the slightest coloring to the idea that this is a Court, save that in the trial of this particular respondent the Chief Justice of the Supreme Court must preside. But even this provision can have no determining effect upon the question, because, is not this the same Tribunal in all its powers, incidents, and duties, when other civil officers are brought to its bar for trial, when the Vice-President (not a judicial officer) must preside? Can it be contended for a moment that this is the Senate of the United States when sitting on the trial of all other officers, and a Court only when the President is at the bar? solely because in

this case the Constitution has designated the Chief Justice as the presiding officer?

The fact that Senators are sitting for this purpose on oath or affirmation does not influence the argument, because it is well understood that that was but a substitute for the obligation of honor under which, by the theory of the British constitution, the peers of England were supposed to sit in like cases.

A peer of England makes answer in a court of chancery upon honor, when a common person must answer upon oath. But our fathers, sweeping away all distinctions of caste, required every man alike, acting in a solemn proceeding like this, to take an oath. Our Constitution holds all good men alike honorable, and entitled to honor.

The idea that this tribunal was a Court seems to have crept in because of the analogy to similar proceedings in trials before the House of Lords.

Analogies have ever been found deceptive and illusory. Before such analogy is invoked we must not forget that the Houses of Parliament at first, and latterly the House of Lords, claimed and exercised jurisdiction over all crimes, even where the punishment extended to life and limb. By express provision of our Constitution all such jurisdiction is taken from the Senate and "the judicial power of the United States is vested in one Supreme Court and such inferior courts as from time to time Congress may ordain and establish."

We suggest, therefore, that we are in the presence of the Senate of the United States convened as a constitutional tribunal, to inquire into and determine whether Andrew Johnson, because of malversation in office, is longer fit to retain the office of President of the United States, or hereafter to hold any office of honor or profit.

I respectfully submit that thus far your mode of proceeding has no analogy to that of a court. You issue a summons to give the respondent notice of the case pending against him. You do not sequester his person—you do not require his personal appearance even; you proceed against him and will *go on* to determine his cause in his absence, and make the final order therein. How different is each step from those of ordinary criminal procedure.

A constitutional tribunal solely, you are bound by no law, either statute or common, which may limit your constitutional prerogative. You consult no precedents save those of the law and custom of parliamentary bodies. You are a law unto yourselves, bound only by the natural principles of equity and justice, and that *salus populi suprema est lex.*

Upon these principles and parliamentary law no judges can aid you, and indeed in late years the judges of England in the trial of impeachment declined to speak to a question of parliamentary law, even at the request of the House of Peers, although they attended on them in their robes of office.

Nearly five hundred years ago, in 1388, the House of Lords resolved, in the case of Belknap and the other judges, "That these matters, when brought before them, shall be discussed and adjudged by the course of Parliament, and not by the civil law, nor by the common law of the land used in other inferior courts."

And that resolution, which was in contravention of the opinion of all the judges of England, and against the remonstrance of Richard II, remains the unquestioned law of England to this day.

Another determining quality of this tribunal, distinguishing it from a court and the analogies of ordinary legal proceedings, and showing that it is a Senate only, is, that there can be no right of challenge by either party to any of its members for favor, or malice, affinity, or interest.

This has been held from the earliest times in Parliament even when that was the high court of judicature of the realm sitting to punish all crimes against the peace.

In the case of The Duke of Somerset, (1 Howell's State Trials, p. 521,) as early as 1551, it was held that the Duke of Northumberland and the Marquis

of Northampton and the Earl of Pembroke, for an attempt upon whose lives Somerset was on trial, should sit in judgment upon him against the objection of the accused because "a peer of the realm might not be challenged."

Again, the Duke of Northumberland, (ibid., 1st State Trials, p. 765,) Marquis of Northampton, and Earl of Warwick, *being* on trial for their lives, A. D. 1553, before the Court of the Lord High Steward of England, one of the prisoners inquired whether any such persons as were equally culpable in that crime, and those by whose letters and commandments he was directed in all his doings, might be his judges, or pass upon his trial at his death. It was answered that, "If any were as deeply to be touched as himself in that case, yet as long as no attainder of record were against them, they were nevertheless persons able in the law to pass upon any trial, and not to be challenged therefor, but at the prince's pleasure."

Again, on the trial of Earls of Essex and Southampton, (ibid., 1 State Trials, p. 1335,) for high treason, before all the justices of England, A. D. 1600, the Earl of Essex desired to know of my Lord Chief Justice whether he might challenge any of the peers or no. Whereunto the Lord Chief Justice answered "No."

Again, in Lord Audley's case, (ibid., 3 State Trials, page 402, A. D. 1631,) it was questioned whether a peer might challenge his peers, as in the case of common jurats. It was answered by all the judges, after consultation, "he might not." [This case is of more value because it was an indictment for being accessory to rape upon his own wife, and had no political influence in it whatever.] The same point was ruled in the Countess of Essex's case on trial for treason. (Moore's Reports, 621.)

In the Earl of Portland's case, A. D. 1701, (ibid., State trials, page 288,) the Commons objected that Lord Sommers, the Earl of Oxford, and Lord Halifax, who had been impeached by the Commons before the House of Lords for being concerned in the same acts for which Portland was being brought to trial, voted and acted with the House of Lords in the preliminary proceedings of said trial, and were upon a committee of conference in relation thereto. But the lords after discussion solemnly resolved "that no lord of Parliament, impeached of high crimes and misdemeanors, can be precluded from voting on any occasion, except on his own trial."

In the trial of Lord Viscount Melville, A. D. 1806, (ibid., 29 State Trials, p. 1398,) some observations having been made as to the possible bias of some portion of the peers, (by the counsel for defendant,) Mr. Whitebread, one of the managers on the part of the Commons, answered as follows:

> My lords, as to your own court, something has been thrown out about the possibility of a challenge. Upon such a subject it will not be necessary to say more than this, which has been admitted: that an order was given by the House of Commons to prosecute Lord Melville in a court of law where he would have the *right* to challenge his jurors. * * * What did the noble Viscount then do by the means of one of his friends? * * * From the mouth of that learned gentleman came at last the successful motion: "that Henry, Viscount of Melville, be impeached of high crimes and misdemeanors." I am justified, then, in saying that he is here by his own option. * * * But, my lords, a challenge to your lordships! Is not every individual peer the guardian of his own honor?

In the trial of Warren Hastings the same point was ruled, or, more properly speaking, taken for granted, for of the more than 170 peers who commenced the trial, but 29 sat and pronounced the verdict at the close, and some of those were peers created since the trial began, and had not heard either the opening or much of the evidence; and during the trial there had been by death, succession, and creation more than 180 changes in the House of Peers, who were his judges.

We have abundant authority also on this point in our own country.

In the case of Judge Pickering, who was tried in March, 1804, for drunkenness in office, although undefended in form, yet he had all his rights preserved.

This trial being postponed a session, three senators—Samuel Smith, of Maryland, Israel Smith, of Vermont, and John Smith, of New York—who had all been members of the House of Representatives, and there voted in favor of impeaching Judge Pickering, were senators when his trial came off.

Mr. Smith, of New York, raised the question, by asking to be excused from voting. Mr. Smith, of Maryland, declared "he would not be influenced from his duty by any false delicacy; that he, for his part, felt no delicacy upon the subject: the vote he had given in the other house to impeach Judge Pickering would have no influence upon him in the court; his constituents had a right to his vote, and he would not by any act of his deprive, or consent to deprive, them of that right, but would claim and exercise it upon this as upon every other question that might be submitted to the Senate whilst he had the honor of a seat."

A vote being had upon the question, it was determined that these gentlemen should sit and vote on the trial. This passed in the affirmative by a vote of 19 to 7, and all the gentlemen sat and voted on every question during the trial.

On the trial of Samuel Chase before the Senate of the United States, no challenge was attempted, although the case was decided by an almost strict party vote in high party times, and doubtless many of the senators had formed and expressed opinions upon his conduct.

That arbitrary judge, but learned lawyer, knew too much to attempt any such futile movement as a challenge to a senator. Certain it is that the proprieties of the occasion were not marred by the worse than anomalous proceeding of the challenge of one senator to another, especially before the defendant had appeared.

Nor did the Managers exercise the right of challenge, although Senators Smith and Mitchell, of New York, were members of the Senate on the trial and voted *not guilty* on every article, who had been members of the House when the articles were found, and had there voted steadily against the whole proceeding.

Judge Peck's case, which was tried in 1831, affords another instance in point

The conduct of Judge Peck had been the subject of much animadversion and comment by the public, and had been for four years pending before the Congress of the United States before it finally came to trial. It was not possible but that many of the Senate had both formed and expressed opinions upon Peck's proceedings, and yet it never occurred to that good lawyer to make objection to his triers. Nor did the Managers challenge, although Webster of Massachusetts was a member of the committee of the House of Representatives to whom the petition for impeachment was referred, and which, after examination, reported thereon "leave to withdraw," and Sprague, of Maine, voted against the proceedings in the House, while Livingston, of Louisiana, voted for them. All of these gentlemen sat upon the trial, and voted as they did in the House.

A very remarkable and instructive case was that of Judge Addison, of Pennsylvania, in 1804. There, after the articles of impeachment were framed, the trial was postponed to another session of the legislature. Meanwhile, three members of the House of Representatives, who had voted for the articles of impeachment, were elected to the Senate and became the triers of the articles of impeachment of which they had solemnly voted the respondent to be guilty. To their sitting on the trial Judge Addison objected, but after an exhaustive argument his objection was overruled, 17 to 6. Two of the minority were the gentlemen who had voted him guilty, and who themselves objected to sitting on the trial.

Thus stands the case upon authority. How does it stand upon principle?

In a conference held in 1691, between the lords and commons, on a proposition to limit the number of judges, the lords made answer:

> That in the case of impeachments, which are the grouns of the people, and for the highest crimes, and carry with them a greater supposition of guilt than any other accusation, there all the lords must judge

There have been many instances in England where this necessity, that no peer be excused from sitting on such trials, has produced curious results. Brothers have sat upon the trials of brothers, fathers upon the trials of sons and daughters, uncles upon the trials of nephews and nieces; no excuse being admitted.

One, and a most peculiar and painful instance, will suffice upon this point to illustrate the strength of the rule. In the trial of Anne Bullen, the wife of one sovereign of England, and the mother of another, her father, Lord Rochefort, and her uncle, the Duke of Norfolk, sat as judges and voted guilty, although one of the charges against the daughter and niece was a criminal intimacy with her brother, the son and nephew of the judges.

It would seem impossible that in a proceeding before such a tribunal so constituted there could be a challenge, because as the number of triers is limited by law, and as there are not now, and never have been, any provisions, either in England or in this country, for substituting another for the challenged party, as a talesman is substituted in a jury, the accused might escape punishment altogether by challenging a sufficient number to prevent a quorum, or the accuser might oppress the respondent by challenging all persons favorable to him until the necessary unanimity for conviction was secured.

This proceeding being but an inquest of office, and, except in a few rare instances, always partaking, more or less, of political considerations, and required to be discussed, before presentation to the triers, by the co-ordinate branch of the legislature, it is impossible that senators should not have opinions and convictions upon the subject-matter more or less decidedly formed before the case reaches them. If, therefore, challenges could be allowed because of such opinions, as in the case of jurors, no trial could go forward, because every intelligent senator could be objected to upon one side or the other.

I should have hardly dared to trouble the Senate with such minuteness of citation and argument upon this point, were it not that certain persons and papers outside of this body, by sophistries drawn from the analogies of the proceedings in courts before juries, have endeavored, in advance, to prejudice the public mind, but little instructed in this topic, because of the infrequency of impeachments, against the legal validity and propriety of the proceedings upon this trial.

I may be permitted, without offence, further to state that these and similar reasons have prevented the Managers from objecting by challenge or otherwise to the competency of one of the triers of near affinity to the accused.

We believe it is his right, nay, his duty to the State he represents, to sit upon the trial as he would upon any other matter which should come before the Senate. His seat and vote belong to his constituents, and not to himself, to be used according to his best judgment upon every grave matter that comes before the Senate.

Again, as political considerations are involved in this trial raising questions of interest to the constituents of every senator, it is his right and duty to express himself as fully and freely upon such questions as upon any other, even to express a belief in the guilt or innocence of the accused or to say "he will sustain him in the course he is taking," although he so says after accusation brought. Let me illustrate. Suppose that after this impeachment had been voted by the House of Representatives the constituents of any senator had called a public meeting to sustain the President against what they were pleased to term the "tyrannical acts of Congress towards him in impeaching him," and should call upon their senator to attend and take part in such meeting, I do not conceive that it would, or ought to be legally objected against him as a disqualification to sit upon this trial, upon the principles I have stated, if he should attend the meeting, or favor the object, or, if his engagements in the Senate prevented his leaving, I have not been able to find any legal objection in the books to his writing

a letter to such meeting, containing, among other things, statements like the following:

SENATE CHAMBER, *February* 24, 1868.

GENTLEMEN: My public and professional engagements will be such on the 4th of March that I am reluctantly compelled to decline your invitation to be present and address the meeting to be held in our city on that day. *

* * * * * * *

That the President of the United States has sincerely endeavored to preserve these (our free institutions) from violation I have no doubt, and I have, therefore, throughout the unfortunate difference of opinion between him and Congress, sustained him. And this I shall continue to do as long as he shall prove faithful to duty. With my best thanks for the honor you have done me by your invitation, and regretting that it is not in my power to accept it,

I remain, with regard, your obedient servant,

REVERDY JOHNSON.

We should have as much right to expect his vote on a clearly-proven case of guilty as had King Henry the Eighth to hope for the vote of her father against his wife. He got it.

King Henry knew the strength of his case, and we know the strength of ours against this respondent.

If it be said that this is an infelicity, it is a sufficient and decisive answer that it is the infelicity of a precise constitutional provision, which provides that the Senate shall have the sole power to try impeachments, and the only security against bias or prejudice on the part of any senator is that *two-thirds* of the senators present are necessary for conviction.

To this rule there is but one possible exception, founded on both reason and authority, that a senator may not be a judge in his own case.

I have thought it necessary to determine the nature and attributes of the Tribunal, before we attend to the scope and meaning of the accusation before it.

The first eight articles set out in several distinct forms the acts of the respondent in removing Mr. Stanton from office, and appointing Mr. Thomas, *ad interim*, differing in legal effect in the purposes for which and the intent with which, either or both of the acts were done, and the legal duties and rights infringed, and the acts of Congress violated in so doing.

All the articles allege these acts to be in contravention of his oath of office, and in disregard of the duties thereof.

If they are so, however, the President might have the *power* to do them under the law; still, being so done, they are acts of official misconduct, and, as we have seen, impeachable.

The President has the legal power to do many acts which, if done in disregard of his duty, or for improper purposes, then the exercise of that power is an official misdemeanor.

Ex. gr.: he has the power of pardon; if exercised in a given case for a corrupt motive, as for the payment of money, or wantonly pardoning all criminals, it would be a misdemeanor. Examples might be multiplied indefinitely.

Article first, stripped of legal verbiage, alleges that, having suspended Mr. Stanton and reported the same to the Senate, which refused to concur in the suspension, and Stanton having rightfully resumed the duties of his office, the respondent, with knowledge of the facts, issued an order which is recited for Stanton's removal, with intent to violate the act of March 2, 1867, to regulate the tenure of certain civil offices, and with the further intent to remove Stanton from the office of Secretary of War, then in the lawful discharge of its duties, in contravention of said act without the advice and consent of the Senate, and against the Constitution of the United States.

Article 2 charges that the President, without authority of law, on the 21st of February, 1868, issued letter of authority to Lorenzo Thomas to act as Secretary of War *ad interim*, the Senate being in session, in violation of the tenure-of-office act, and with intent to violate it and the Constitution, there being no vacancy in the office of Secretary of War.

Article 3 alleges the same act as done without authority of law, and alleges an intent to violate the Constitution.

Article 4 charges that the President conspired with Lorenzo Thomas and divers other persons, with intent, by *intimidation and threats*, to prevent Mr. Stanton from holding the office of Secretary of War, in violation of the Constitution and of the act of July 31, 1861.

Article 5 charges the same conspiracy with Thomas to prevent Mr. Stanton's holding his office, and thereby to prevent the execution of the civil tenure act.

Article 6 charges that the President conspired with Thomas to seize and possess the property under the control of the War Department by *force*, in contravention of the act of July 31, 1861, and with intent to disregard the civil tenure-of-office act.

Article 7 charges the same conspiracy, with intent only to violate the civil tenure-of-office act.

Articles 3d, 4th, 5th, 6th, and 7th may all be considered together, as to the proof to support them.

It will be shown that having removed Stanton and appointed Thomas, the President sent Thomas to the War Office to obtain possession; that having been met by Stanton with a denial of his rights, Thomas retired, and after consultation with the President, Thomas asserted his purpose to take possession of the War Office by force, making his boast in several public places of his intentions so to do, but was prevented by being promptly arrested by process from the court.

This will be shown by the evidence of Hon. Mr. Van Horn, a member of the House, who was present when the demand for possession of the War Office was made by General Thomas, already made public.

By the testimony of the Hon. Mr. Burleigh, who, after that, in the evening of the twenty-first of February, was told by Thomas that he intended to take possession of the War Office by force the following morning, and invited him up to see the performance. Mr. Burleigh attended, but the act did not come off, for Thomas had been arrested and held to bail.

By Thomas boasting at Willards' hotel on the same evening that he should call on General Grant for military force to put him in possession of the office, and he did not see how Grant could refuse it.

Article 8 charges that the appointment of Thomas was made for the purpose of getting control of the disbursement of the moneys appropriated for the military service and Department of War.

In addition to the proof already adduced, it will be shown that, after the appointment of Thomas, which must have been known to the members of his cabinet, the President caused a formal notice to be served on the Secretary of the Treasury, to the end that the Secretary might answer the requisitions for money of Thomas, and this was only prevented by the firmness with which Stanton retained possession of the books and papers of the War Office.

It will be seen that every fact charged in Article 1 is admitted by the answer of the respondent; the intent is also admitted as charged; that is to say, to set aside the civil tenure-of-office act, and to remove Mr. Stanton from the office of the Secretary for the Department of War without the advice and consent of the Senate, and, if not justified, contrary to the provisions of the Constitution itself.

The only question remaining is, does the respondent justify himself by the Constitution and laws?

On this he avers, that by the Constitution, there is "conferred on the President, as a part of the executive power, the power at any and all times of removing from office all executive officers for cause, to be judged of by the President alone, and that he verily believes that the executive power of removal from office, confided to him by the Constitution, as aforesaid, includes the power of suspension from office indefinitely."

Now, these offices, so vacated, must be filled, temporarily at least, by his

appointment, because government must go on; there can be no interregnum in the execution of the laws in an organized government; he claims, therefore, of necessity, the right to fill their places with appointments of his choice, and that this power cannot be restrained or limited in any degree by any law of Congress, because, he avers, "that the power was conferred, and the duty of exercising it in fit cases was imposed on the President by the Constitution of the United States, and that the President could not be deprived of this power, or relieved of this duty, nor could the same be vested by law in the President and the Senate jointly, either in part or whole."

This, then, is the plain and inevitable issue before the Senate and the American people:

Has the President, under the Constitution, the more than kingly prerogative at will to remove from office and suspend from office indefinitely, all executive officers of the United States, either civil, military, or naval, at any and all times, and fill the vacancies with creatures of his own appointment, for his own purposes, without any restraint whatever, or possibility of restraint by the Senate or by Congress through laws duly enacted?

The House of Representatives, in behalf of the people, join this issue by affirming that the exercise of such powers is a high misdemeanor in office.

If the affirmative is maintained by the respondent, then, so far as the first eight articles are concerned—unless such corrupt purposes are shown as will of themselves make the exercise of a legal power a crime—the respondent must go, and ought to go quit and free.

Therefore, by these articles and the answers thereto, the momentous question, here and now, is raised whether the *presidential office itself (if it has the prerogatives and power claimed for it) ought, in fact, to exist as a part of the constitutional government of a free people*, while by the last three articles the simpler and less important inquiry is to be determined, whether Andrew Johnson has so conducted himself that he ought longer to hold any constitutional office whatever. The latter sinks to merited insignificance compared with the grandeur of the former.

If that is sustained, then a right and power hitherto unclaimed and unknown to the people of the country is engrafted on the Constitution, most alarming in its extent, most corrupting in its influence, most dangerous in its tendencies, and most tyrannical in its exercise.

Whoever, therefore, votes "not guilty" on these articles votes to enchain our free institutions, and to prostrate them at the feet of any man who, being President, may choose to control them.

For this most stupendous and unlimited prerogative the respondent cites no line and adduces no word of constitutional enactment—indeed he could not, for the only mention of removal from office in the Constitution is as a part of the judgment in case of impeachment, and the only power of appointment is by nomination to the Senate of officers to be appointed by their advice and consent, save a qualified and limited power of appointment by the President when the Senate is not in session. Whence then does the respondent by his answer claim to have derived this power? I give him the benefit of his own words, "that it was practically settled by the first Congress of the United States." Again, I give him the benefit of his own phrases as set forth in his message to the Senate of 2d of March, 1867, made a part of his answer: "the question was decided by the House of Representatives by a vote of 31 to 20, (in this, however, he is mistaken,) and in the Senate by the casting vote of the Vice-President." In the same answer he admits that before he undertook the exercise of this most dangerous and stupendous power, after 75 years of study and examination of the Constitution by the people living under it, another Congress has decided that there was no such unlimited power. So that he admits that this tremendous power which he claims from the legislative construction of one Con-

gress by a vote of 34 to 20 in the House, and a tie vote in the Senate, has been denied by another House of more than three times the number of members by a vote of 133 to 37; and by a Senate of more than double the number of senators by a vote of 38 to 10, and this too after he had presented to them all the arguments in its favor that he could find to sustain his claim of power.

If he derives this power from the practical settlement of one Congress of a legislative construction of the constitutional provisions, why may not such construction be as practically settled more authoritatively by the greater unanimity of another Congress—yea, as we shall see, of many other Congresses?

The great question, however, still returns upon us—whence comes this power?—how derived or conferred? Is it unlimited and unrestrained? illimitable and unrestrainable, as the President claims it to be?

In presenting this topic it will be my duty, and I shall attempt to do nothing more, than to state the propositions of law and the authorities to support them so far as they may come to my knowledge, leaving the argument and illustrations of the question to be extended in the close by abler and better hands.

If a power of removal in the Executive is found at all in the Constitution, it is admitted to be an implied one, either from the power of appointment, or because "the executive power is vested in the President."

Has the executive power granted by the Constitution by these words any limitations? Does the Constitution invest the President with all executive power, prerogatives, privileges, and immunities enjoyed by executive officers of other countries—kings and emperors—without limitation? If so, then the Constitution has been much more liberal in granting powers to the Executive than to the legislative branch of the government, as that has only "all legislative powers herein granted [which] shall be vested in the Congress of the United States;" not all uncontrollable legislative powers, as there are many limitations upon that power as exercised by the Parliament of England for example. So there are many executive powers expressly limited in the Constitution, such as declaring war, making rules and regulations for the government of the army and navy, and coining money.

As some executive powers are limited by the Constitution itself, is it not clear that the words "the executive power is vested in the President" do not confer on him all executive powers, but must be construed with reference to other constitutional provisions granting or regulating specific powers? The executive power of appointment is clearly limited by the words "he shall nominate and by and with the advice and consent of the Senate shall appoint embassadors, * * * and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law."

Is it not, therefore, more in accordance with the theory of the Constitution to imply the power of removal from the power of appointment, restrained by like limitations, than to imply it solely as a prerogative of executive power and therefore illimitable and uncontrollable? Have the people anywhere else in the Constitution granted illimitable and uncontrollable powers either to the executive or any other branch of the government? Is not the whole frame of government one of checks, balances, and limitations? Is it to be believed that our fathers, just escaping from the oppressions of monarchical power, and so dreading it that they feared the very name of king, gave this more than kingly power to the Executive, illimitable and uncontrollable, and that too by implication merely?

Upon this point our proposition is, that the Senate being in session, and an office, not an inferior one, within the terms of the Constitution being filled, the President has the implied power of inaugurating the removal *only* by nomination of a successor to the Senate, which, when consented to, works the full removal and supersedeas of the incumbent. Such has been, it is believed, the practice of the government from the beginning down to the act about which

we are inquiring. Certain it is that Mr. Webster, in the Senate in 1835, so asserted without contradiction, using the following language:

If one man be Secretary of State, and another be appointed, the first goes out by the mere force of the appointment of the other, without any previous act of removal whatever. And this is the practice of the government, and has been from the first. In all the removals which have been made they have generally been effected simply by making other appointments. I cannot find a case to the contrary. There is no such thing as any distinct official act of removal. I have looked into the practice, and caused inquiries to be made in the departments, and I do not learn that any such proceeding is known as an entry or record of the removal of an officer from office, and the President would only act in such cases by causing some proper record or entry to be made as proof of the fact of removal. I am aware that there have been some cases in which notice has been sent to persons in office that their services are or will be, after a given day, dispensed with. These are usually cases in which the object is, not to inform the incumbent that he is removed, but to tell him that a successor either is or by a day named will be appointed. If there be any instances in which such notice is given, without express reference to the appointment of a successor, they are few; and even in these such reference must be implied, because in no case is there any distinct official act of removal, as I can find, unconnected with the act of appointment.

This would seem to reconcile all the provisions of the Constitution, the right of removal being in the President, to be executed *sub modo*, as is the power of appointment, the appointment, when consummated, making the removal.

This power was elaborately debated in the first Congress upon the bills establishing a Department of Foreign Affairs and the War Department. The debate arose on the motion, in Committee of the Whole, to strike out, after the title of the officer, the words, "to be removable from office by the President of the United States." It was four days discussed in Committee of the Whole in the House, and the clause retained by a vote of 20 yeas to 34 nays, which seemed to establish the power of removal as either by a legislative grant, or construction of the Constitution. But the triumph of its friends was short-lived, for when the bill came up in the House, Mr. Benson moved to amend it by altering the second section of the bill, so as to *imply* only the power of removal to be in the President, by inserting, that "whenever the principal officer shall be removed from office by the President of the United States, or in any other case of vacancy, the chief clerk shall, during such vacancy, have charge and custody of all records, books, and papers appertaining to the department."

Mr. Benson "declared he would move to strike out the words in the first clause, to be removable by the President, which appeared somewhat like a grant. Now the mode he took would evade that point and establish a legislative construction of the Constitution. He also hoped his amendment would succeed in reconciling both sides of the House to the decision and quieting the minds of the gentlemen."

After debate the amendment was carried, 30 to 18. Mr. Benson then moved to strike out the words "to be removable by the President of the United States," which was carried, 31 to 19; and so the bill was engrossed and sent to the Senate.

The debates of that body being in secret session, we have no record of the discussion which arose on the motion of Mr. Benson establishing the implied power of removal; but after very elaborate consideration, on several successive days, the words implying this power in the President were retained by the casting vote of the elder Adams, the Vice-President. So, if this claimed "legislative settlement" was only established by the vote of the second executive officer of the government. Alas! most of our woes in this government have come from Vice-Presidents. When the bill establishing the War Department came up, the same words, "to be removable by the President," were struck out, on the motion of one of the opponents of the recognition of this power, by a vote of 24 to 22, a like amendment to that of the second section of the act establishing the Department of State being inserted. When, six years afterwards, the Department of the Navy was established, no such recognition of the power of the President to remove was inserted; and as the measure passed by a strict party

vote, 47 yeas to 41 nays, it may well be conceived that its advocates did not care to load it with this constitutional question, when the executive power was about passing into other hands, for one cannot read the debates upon this question without being impressed with the belief that reverence for the character of Washington largely determined the argument in the first Congress. Neither party did or could have looked forward to such an executive administration as we have this day.

It has generally been conceded in subsequent discussions that here was a legislative determination of this question, but I humbly submit that taking the whole action of Congress together it is very far from being determined. I should hardly have dared, in view of the eminent names of Holmes, Clay, Webster, and Calhoun that have heretofore made the admission, to have ventured the assertion, were it not that in every case they, as does the President and his counsel, rely on the first vote in the Committee of the Whole, sustaining the words "to be removable by the President," and in no instance take any notice of the subsequent proceedings in the House by which those words were taken out of the bill. This may have happened because Eliot's Debates, which is the authority most frequently cited in these discussions, stops with the vote in Committee and takes no notice of the further discussion. But whatever may be the effect of this legislative construction the contemporaneous and subsequent practice of the government shows that the President made no removals except by nominations to the Senate when in session, and superseding officers by a new commission to the confirmed nominee. Mr. Adams, in that remarkable letter to Mr. Pickering, in which he desires his resignation, requests him to send it early in order that he may nominate to the Senate, then about to sit, and he in fact removes Mr. Pickering by a nomination. Certainly no such unlimited power has ever been claimed by any of the earlier Presidents as has now been set up for the President by his most remarkable, aye, criminal answer.

It will not have escaped attention that no determination was made by that legislative construction as to *how* the removal, if in the President's power, should be made, which is now the question in dispute. *That* has been determined by the universal practice of the government, with exceptions, if any, so rare as not to be worthy of consideration; so that we now claim the law to be what the practice has ever been. If, however, we concede the power of removal to be in the President as an implied power, yet we believe it cannot be successfully contended upon any authorities or constant practice of the government that the execution of that power may not be regulated by the Congress of the United States under the clause in the Constitution which "vests in Congress the power to make all laws which shall be necessary and proper for carrying into execution * * * all powers vested by this Constitution in the government of the United States or in any department or officer thereof."

This power of regulation of the tenure of office, and the manner of removal, has always been exercised by Congress unquestioned until now.

On the 15th of May, 1820, (vol. 3 Stat. at Large, p. 582,) Congress provided for the term of office of certain officers therein named to be four years, but made them removable at pleasure. By the second section of the same act Congress removed from office all the officers therein commissioned, in providing a date when each commission should expire. Congress has thus asserted a legislative power of removal from office; sometimes by passing acts which appear to concede the power to the President to remove at pleasure, sometimes restricting that power in their acts by the most stringent provisions; sometimes conferring the power of removal, and sometimes that of appointment—the acts establishing the territorial officers being most conspicuous in this regard.

Upon the whole, no claim of exclusive right over removals or appointments seems to have been made either by the Executive or by Congress. No bill was ever vetoed on this account until now.

In 1818, Mr. Wirt, then Attorney General, giving the earliest official opinion on this question coming from that office, said that only where Congress had not undertaken to restrict the tenure of office, by the act creating it, would a commission issue to run during the pleasure of the President; but if the tenure was fixed by law, then commission must conform to the law. No constitutional scruples as to the power of Congress to limit the tenure of office seem to have disturbed the mind of that great lawyer. But this was before any attempt had been made by any President to arrogate to himself the official patronage for the purpose of party or personal aggrandisement, which gives the only value to this opinion as an authority. Since the Attorney General's office has become a political one I shall not trouble the Senate with citing or examining the opinions of its occupants.

In 1826 a committee of the Senate, consisting of Mr. Benton of Missouri, chairman, Mr. Macon of North Carolina, Mr. Van Buren of New York, Mr. Dickerson of New Jersey, Mr. Johnson of Kentucky, Mr. White of Tennessee, Mr. Holmes of Maine, Mr. Hayne of South Carolina, and Mr. Findlay of Pennsylvania, was appointed 'to take into consideration the question of restraining the power of the President over removals from office, who made a report through their chairman, Mr. Benton, setting forth the extent of the evils arising from the power of appointment to and removal from office by the President, declaring that the Constitution had been changed in this regard, and that "construction and legislation have accomplished this change," and submitted two amendments to the Constitution, one providing a direct election of the President by the people, and another "that no senator or representative should be appointed to any place until the expiration of the presidential term in which such person shall have served as senator or representative," as remedies for some of the evils complained of; but the committee say, that "not being able to reform the Constitution, in the election of President they must go to work upon his powers, and trim down these by *statutory enactments* whenever it can be done by law and with a just regard to the proper efficiency of government, and for this purpose reported six bills—one, to regulate the publication of the laws and public advertisements; another, *to secure in office* faithful collectors and disbursers of the revenues, and to displace defaulters—the first section of which vacated the commissions of "all officers, after a given date, charged with the collection and disbursement of the public moneys who had failed to account for such moneys on or before the 30th day of September preceding;" and the second section enacted that "at the same time a nomination is made to fill a vacancy occasioned by the exercise of the President's power to remove from office, the fact of the removal shall be stated to the Senate with a report of the reasons for which such officers may have been removed; also a bill to regulate the appointment of postmasters; and a bill to prevent military and naval officers from being dismissed the service at the pleasure of the President, by inserting a clause in the commission of such officers that "it is to continue in force during good behavior," and "that no officer shall ever hereafter be dismissed the service except in pursuance of the sentence of a court-martial, or upon address to the President from the two houses of Congress."

Is it not remarkable that exactly correlative measures to these have been passed by the 39th Congress, and are now the subject of controversy at this bar?

It does not seem to have occurred to this able committee that Congress had not the power to curb the Executive in this regard, because they asserted the practice of dismissing from office "to be a dangerous violation of the Constitution."

In 1830 Mr. Holmes introduced and discussed in the Senate a series of resolutions which contained, among other things, "the right of the Senate to inquire, and the duty of the President to inform them, when and for what causes any officer has been removed in the *recess*." In 1835 Mr. Calhoun, Mr. Southard,

Mr. Bibb, Mr. Webster, Mr. Benton, and Mr. King, of Georgia, of the Senate, were elected a committee to consider the subject of Executive patronage, and the means of limiting it. That committee, with but one dissenting voice, (Mr. Benton,) reported a bill which provided in its third section "that in all nominations made by the President to the Senate, to fill vacancies occasioned by removal from office, the fact of the removal shall be stated to the Senate at the same time that the nomination is made, with a statement of the reasons for such removal."

It will be observed that this is the precise section reported by Mr. Benton in 1826, and passed to a second reading in the Senate. After much discussion, the bill passed the Senate, 31 yeas, 16 nays—an almost two-thirds vote. Thus it would seem that the ablest men of that day, of both political parties, subscribed to the power of Congress to limit and control the President in his removal from office.

One of the most marked instances of the assertion of this power in Congress will be found in the act of February 25, 1863, providing for a national currency and the office of Comptroller. (Statutes at Large, vol. 12, p. 665.) This controls both the appointment and the removal of that officer, enacting that he shall be appointed on the nomination of the Secretary of the Treasury, by and with the advice and consent of the Senate, and shall hold his office for the term of five years, unless sooner removed by the President, by and with the advice and consent of the Senate. This was substantially re-enacted June 3, 1864, with the addition that "he shall be removed upon reasons to be communicated to the Senate."

Where were the vigilant gentlemen then, in both houses, who now so denounce the power of Congress to regulate the appointment and removal of officers by the President as unconstitutional?

It will be observed that the Constitution makes no distinction between the officers of the army and navy and officers in the civil service, so far as their appointments and commissions, removals and dismissals, are concerned. Their commissions have ever run, "to hold office during the pleasure of the President;" yet Congress, by the act of 17th July, 1862, (Statutes at Large, volume 12, page 596,) enacted "that the President of the United States be, and hereby is, authorized and requested to dismiss and discharge from the military service, either in the army, navy, marine corps, or volunteer force, in the United States service, any officer for any cause which, in his judgment, either renders such officer unsuitable for or whose dismission would promote the public service."

Why was it necessary to authorize the President so to do, if he had the Constitutional power to dismiss a military officer at pleasure? and his powers, whatever they are, as is not doubted, are the same as in a civil office. The answer to this suggestion may be that this act was simply one of supererogation, only authorizing him to do what he was empowered already to do, and therefore not specially pertinent to this discussion.

But on the 13th of July, 1866, Congress enacted "that no officer in the military or naval service *shall*, in time of peace, *be dismissed* from service except upon, and in pursuance of, the sentence of a court-martial to that effect." What becomes, then, of the respondent's objection that Congress cannot regulate his power of removal from office? In the snow-storm of his vetoes why did no flake light down on this provision? It concludes the whole question here at issue. It is approved; approval signed Andrew Johnson.

It will not be claimed, however, if the tenure-of-office act is constitutional, (and that question I shall not argue, except as has been done incidentally, for reasons hereafter to be stated,) that he could remove Mr. Stanton provided the office of Secretary of War comes within its provisions, and one claim made here before you, by the answer, is that that office is excepted by the terms of the law.

Of course I shall not argue to the Senate, composed mostly of those who passed the bill, what their wishes and intentions were. Upon that point I cannot aid them, but the construction of the act furnishes a few suggestions. First let us determine the exact status of Mr. Stanton at the moment of its passage. The answer admits Mr. Stanton was appointed and commissioned and duly qualified as Secretary of War under Mr. Lincoln in pursuance of the act of 1789. In the absence of any other legislation or action of the President, he legally held his office during the term of his natural life. This consideration is an answer to every suggestion as to the Secretary holding over from one presidential term to another.

On the 2d of March, 1867, the tenure-of-office act provided, in substance, that all civil officers duly qualified to act by appointment, with the advice and consent of the Senate, shall be entitled to hold such office until a successor shall have been in like manner appointed and duly qualified, except as herein otherwise provided, to wit: "provided that the Secretaries shall hold their office during the term of the President by whom they may have been appointed, and for one month thereafter, subject to removal by and with the advice and consent of the Senate."

By whom was Mr. Stanton appointed? By Mr. Lincoln. Whose presidential term was he holding under when the bullet of Booth became a proximate cause of this trial? Was not his appointment in full force at that hour? Had any act of the respondent up to the 12th day of August last vitiated or interfered with that appointment? Whose presidential term is the respondent now serving out? His own, or Mr. Lincoln's? If his own, he is entitled to four years up to the anniversary of the murder, because each presidential term is four years by the Constitution, and the regular recurrence of those terms is fixed by the act of May 8, 1792. If he is serving out the remainder of Mr. Lincoln's term, then his term of office expires on the 4th of March, 1869, if it does not before.

Is not the statement of these propositions their sufficient argument? If Mr. Stanton's commission was vacated in any way by the "tenure-of-office act," then it must have ceased one month after the 4th of March, 1865, to wit: April 4, 1865. Or, if the "tenure-of-office act" had no retroactive effect, then his commission must have ceased if it had the effect to vacate his commission at all on the passage of the act, to wit, 2d March, 1867; and, in that case, from that date to the present he must have been exercising his office in contravention of the second section of the act, because he was not commissioned in accordance with its provisions. And the President, by "employing" him in so doing from 2d March to 12th August, became guilty of a high misdemeanor under the provision of the sixth section of said act; so that if the President shall succeed in convincing the Senate that Mr. Stanton has been acting as Secretary of War against the provisions of the "tenure-of-office act," which *he will* do if he convince them that that act vacated in any way Mr. Stanton's commission, or that he himself was not serving out the remainder of Mr. Lincoln's presidential term, then the House of Representatives have but to report another article for this misdemeanor to remove the President upon his own confession.

It has been said, however, that in the discussion at the time of the passage of this law, observations were made by senators tending to show that it did not apply to Mr. Stanton, because it was asserted that no member of the cabinet of the President would wish to hold his place against the wishes of his chief, by whom he had been called into council; and these arguments have been made the groundwork of attack upon a meritorious officer, which may have so influenced the minds of senators that it is my duty to observe upon them to meet arguments to the prejudice of my cause.

Without stopping to deny the correctness of the general proposition, there seems to be at least two patent answers to it.

The respondent *did not* call Mr. Stanton into his council. The blow of the assassin *did* call the respondent to preside over a cabinet of which Mr. Stanton was then an honored member, beloved of its Chief; and if the respondent deserted the principles under which he was elected, betrayed his trust, and sought to return rebels, whom the valor of our armies had subdued, again into power, are not those reasons, not only why Mr. Stanton should not desert his post, but, as a true patriot, maintain it all the more firmly against this unlooked-for treachery?

Is it not known to you, Senators, and to the country, that Mr. Stanton retains this unpleasant and distasteful position, *not* of his own will alone, but at the behest of a majority of those who represent the people of this country in both houses of its legislature, and after the solemn decision of the senate that any attempt to remove him without their concurrence is unconstitutional and unlawful?

To desert it now, therefore, would be to imitate the treachery of his accidental Chief. But whatever may be the construction of the "tenure of civil office act" by others, or as regards others, Andrew Johnson, the respondent, is concluded upon it.

He permitted Mr. Stanton to exercise the duties of his office in spite of it, if that office were affected by it. He suspended him under its provisions; he reported that suspension to the Senate, with his reasons therefor in accordance with its provisions; and the Senate, acting under it, declined to concur with him, whereby Mr. Stanton was reinstated. In the well-known language of the law, is not the respondent *estopped* by his solemn official acts from denying the legality and constitutional propriety of Mr. Stanton's position?

Before proceeding further, I desire most earnestly to bring to the attention of the Senate the averments of the President in his answer, by which he justifies his action in attempting to remove Mr. Stanton, and the reasons which controlled him in so doing. He claims that on the 12th day of August last he had become fully of the opinion that he had the power to remove Mr. Stanton or any other executive officer, or suspend him from office and to appoint any other person to act instead "indefinitely and at his pleasure;" that he was fully advised and believed, as he still believes, that the tenure of civil office act was unconstitutional, inoperative, and void in all its provisions; and that he had then determined at all hazards, if Stanton could not be otherwise got rid of, to remove him from office in spite of the provisions of that act and the action of the Senate under it, if for no other purpose, in order to raise for a judicial decision the question affecting the lawful right of said Stanton to persist in refusing to quit the office.

Thus it appears that with full intent to resist the power of the Senate, to hold the tenure of office act void, and to exercise this illimitable power claimed by him, he did suspend Mr. Stanton, apparently in accordance with the provisions of the act; he did send the message to the Senate within the time prescribed by the act; he did give his reasons for the suspension to the Senate, and argued them at length, accompanied by what he claimed to be the evidence of the official misconduct of Mr. Stanton, and thus invoked the action of the Senate to assist him in displacing a high officer of the government under the provisions of an act which he at that very moment believed to be unconstitutional, inoperative and void, thereby showing that he was willing to make use of a void act and the Senate of the United States as his tools, to do that which he believed neither had any constitutional power to do. Did not every member of the Senate, when that message came in announcing the suspension of Mr. Stanton, understand and believe that the President was acting in this case as he had done in every other case under the provisions of this act? Did not both sides discuss the question under its provisions? Would any Senator upon this floor, on either side, so demean himself as to consider the question one moment if he had known it was then within the intent and purpose of the President of

the United States to treat the deliberations and action of the Senate as void and of non-effect if its decision did not comport with his views and purposes; and yet, while acknowledging the intent was in his mind to hold as naught the judgment of the Senate if it did not concur with his own, and remove Mr. Stanton at all hazards, and as I charge it upon him here, as a fact no man can doubt, with the full knowledge also that the Senate understood that he was acting under the provisions of the tenure-of-office act, still thus deceiving them, when called to answer for a violation of that act in his solemn answer he makes the shameless avowal that he did transmit to the Senate of the United States a "message wherein he made known the orders aforesaid and the reasons which induced the same, so far as the respondent then considered it material and necessary that the same should be set forth." True it is, there is not one word, one letter, one implication in that message that the President was not acting in good faith under the tenure-of-office act and desiring the Senate to do the same. So the President of the United States, with a determination to assert at all hazards the tremendous power of removal of every officer, without the consent of the Senate, did not deem it "material or necessary" that the Senate should know that he had suspended Mr. Stanton indefinitely against the provisions of the tenure-of-office act, with full intent at all hazards to remove him, and that the solemn deliberations of the Senate, which the President of the United States was then calling upon them to make in a matter of the highest governmental concern, were only to be of use in case they suited his purposes; that it was not "material or necessary" for the Senate to know that its high decision was futile and useless; that the President was playing fast and loose with this branch of the government, which was never before done save by himself.

If Andrew Johnson never committed any other offence—if we knew nothing of him save from this avowal—we should have a full picture of his mind and heart, painted in colors of living light, so that no man will ever mistake his mental and moral lineaments hereafter.

Instead of open and frank dealing, as becomes the head of a great government in every relation of life, and especially needful from the highest executive officer of the government to the highest legislative branch thereof; instead of a manly, straightforward bearing, claiming openly and distinctly the rights which he believed pertained to his high office, and yielding to the other branches, fairly and justly, those which belong to them, we find him, upon his own written confession, keeping back his claims of power, concealing his motives, covering his purposes, attempting by indirection and subterfuge to do that as the ruler of a great nation which, if it be done at all, should have been done boldly, in the face of day; and upon this position he must stand before the Senate and the country if they believe his answer, which I do not, that he had at that time these intents and purposes in his mind, and they are not the subterfuge and evasion and after-thought which a criminal brought to bay makes to escape the consequences of his acts.

Senators! he asked you for time in which to make his answer. You gave him ten days, and this is the answer he makes! If he could do this in ten days, what should we have had if you had given him forty? You shew him a mercy in not extending the time for answer.

Passing from further consideration of the legality of the action of the respondent in removing Mr. Stanton from office in the manner and form and with the intent and purpose with which it has been done, let us now examine the appointment of Brevet Major General Lorenzo Thomas, of the United States army, as Secretary of War *ad interim*.

I assume that it is not denied in any quarter that this *ad interim* appointment to this office is the mere creature of law, and if justified at all, is to be so under some act of Congress. Indeed, the respondent in his answer says that in the

appointment of General Grant *ad interim* he acted under the act of February 13, 1795, and subject to its limitations. By the act of August 7, 1789, creating the Department of War, (1st Statutes at Large, page 49,) "in case of any vacancy" no provision is made for any appointment of an acting or *ad interim* Secretary. In that case the records and papers are to be turned over for safe keeping to the custody of the chief clerk. This apparent omission to provide for an executive emergency was attempted to be remedied by Congress by the act of May 8, 1792, (1st Statutes, 281,) which provides "that in case of the death, absence from the seat of government, or sickness of the Secretary of State, Secretary of the Treasury, or of the Secretary of the War Department, or of any officer of either of the said departments whose appointment is not in the head thereof, *whereby they cannot perform the duties of their respective offices*, it shall be lawful for the President of the United States, in case he shall think it necessary, to authorize any person or persons, at his discretion, to perform the duties of the said respective offices until a successor be appointed, or until such absence or inability by sickness shall cease."

It will be observed that this act provides for vacancies by death, absence, or sickness only, *whereby the head of a department or any officer in it cannot perform his duty*, but makes no provision for vacancy by removal.

Two difficulties were found in that provision of law: first, that it provided only for certain enumerated vacancies; and also, it authorized the President to make an acting appointment of *any* person for *any length* of time. To meet these difficulties the act of 13th February, 1795, was passed, (1st Stat. at Large, 415,) which provides "in case of vacancy, *whereby the Secretaries or any officer in any of the departments cannot perform the duties of his office*, the President may appoint any person to perform the duties for a period *not exceeding six months*."

Thus the law stood as to acting appointments in all of the departments, (except the Navy and Interior, which had no provision for any person to act in place of the Secretary,) until the 19th of February, 1863, when, by the second section of an act approved at that date, (12th Stat., 646,) it was "provided that no person acting or assuming to act as a civil, military, or naval officer shall have any money paid to him as salary in any office which is not authorized by some previously existing law." The state of the law upon this subject at that point of time is thus: In case of death, absence, or sickness, or of any vacancy *whereby* a Secretary or other officer of the State, War, or Treasury Department *could not perform the duties of the office*, any person could be authorized by the President to perform those duties for the space of six months.

For the Departments of the Interior and the Navy provision had been made for the appointment of an Assistant Secretary, but *no* provision in case of vacancy in his office, and a restriction put upon any officers acting when not authorized by law, from receiving any salary whatever.

To meet those omissions and to meet the case of *resignation* of any officer of an executive department, and also to meet what was found to be a defect in allowing the President to appoint *any* person to those high offices for the space of six months, whether such person had any acquaintance with the duties of the department or not, an act was passed February 20, 1863, (12 Stat., p. 656,) which provides, that in case of the death, *resignation*, absence from the seat of government, or sickness of the head of an executive department of the government, or of any officer of either of the said departments whose appointment is not in the head thereof, *whereby they cannot perform the duties of their respective offices*, it shall be lawful for the President of the United States, in case he shall think it necessary, to authorize the head of any other executive department or other officer in either of said departments whose appointment is vested in the President, at his discretion to perform the duties of the said respective offices until a successor be appointed, or until such absence or inability shall cease.

Therefore, in case of the death, resignation, sickness, or absence of a head of an Executive department, whereby the incumbent could not perform the duties of his office, the President might authorize the head of another Executive department to perform the duties of the vacant office, and in case of like disability of any officer of an Executive department other than the head, the President might authorize an officer of the same department to perform his duties for the space of six months.

It is remarkable that in all these statutes, from 1789 down, no provision is made for the case of a removal, or that anybody is empowered to act for the removed officer, the chief clerk being empowered to take charge of the books and papers only.

Does not this series of acts conclusively demonstrate a legislative construction of the Constitution that there could be *no* removal of the chief of an executive department by the act of the President save by the nomination and appointment of his successor, if the Senate were in session, or a qualified appointment till the end of the next session if the vacancy happened or was made in recess?

Let us now apply this state of the law to the appointment of Major General Thomas Secretary of War *ad interim* by Executive order. Mr. Stanton had neither died nor resigned, was not sick nor absent. If he had been, under the act of March 3, 1863, which repeals all inconsistent acts, the President was authorized only to appoint the head of another Executive department to fill his place *ad interim*. Such was not General Thomas. He was simply an officer of the army, the head of a bureau or department of the War Department, and not eligible under the law to be appointed. So that his appointment was an *illegal and void act.*

There have been two cases of *ad interim* appointments which illustrate and confirm this position; the one was the appointment of Lieutenant General Scott Secretary of War *ad interim*, and the other the appointment of General Grant *ad interim* upon the suspension of Mr. Stanton, in August last.

The appointment of General Scott was legal because that was done before the restraining act of March 2, 1863, which requires the detail of the head of another department to act *ad interim*.

The appointment of General Grant to take the place of Mr. Stanton during his suspension would have been illegal under the acts I have cited, he being an officer of the army and not the head of a department, if it had not been authorized by the 2d section of the "tenure-of-civil-office act," which provides that in case of suspension, and no other, the President may designate "some suitable person to perform temporarily the duties of such office until the next meeting of the Senate." Now, General Grant was such "suitable person," and was properly enough appointed under that provision.

This answers one ground of the defence which is taken by the President that he did *not* suspend Mr. Stanton under the "tenure-of-office act," but by his general power of suspension and removal of an officer. If the President did *not* suspend Stanton under the tenure-of-office act, because he deemed it unconstitutional and void, *then* there was no law authorizing him to appoint General Grant, and that appointment was unauthorized by law and a violation of his oath of office.

But the tenure-of-civil-office bill by its express terms forbids any employment, authorization, or appointment of any person in civil office where the appointment is by and with the advice and consent of the Senate, while the Senate is in session. If this act is constitutional, *i. e.*, if it is not so far in conflict with the paramount law of the land as to be inoperative and void, then the removal of Mr. Stanton and the appointment of General Thomas are both in direct violation of it, and are declared by it to be high misdemeanors.

The intent with which the President has done this is not doubtful, nor are

we obliged to rely upon the principle of law that a man must be held to intend the legal consequences of all his acts.

The President admits that he intended to set aside the tenure-of-office act, and thus contravene the Constitution, if that law was unconstitutional.

Having shown that the President wilfully violated an act of Congress, without justification, both in the removal of Stanton and the appointment of Thomas, for the purpose of obtaining wrongfully the possession of the War Office by force, if need be, and certainly by threats and intimidations, for the purpose of controlling its appropriations through its *ad interim* chief, who shall say that Andrew Johnson is not guilty of the high crime and misdemeanors charged against him in the first eight articles?

The respondent makes answer to this view, that the President, believing this civil tenure law to be unconstitutional, *had a right to violate it*, for the purpose of bringing the matter before the Supreme Court for its adjudication.

We are obliged, *in limine*, to ask the attention of the Senate to this consideration, that they may take it with them as our case goes forward.

We claim that the question of the constitutionality of any law of Congress is, upon this trial, a totally irrelevant one; because all the power or right in the President to judge upon any supposed conflict of an act of Congress with the paramount law of the Constitution is exhausted when he has examined a bill sent him and returned it with his objections. If then passed over his veto it becomes as valid as if in fact signed by him.

The Constitution has provided three methods, all equally potent, by which a bill brought into either house may become a law:

1st. By passage by vote of both houses, in due form, with the President's signature;

2d. By passage by vote of both houses, in due form, and the President's neglect to return it within ten days with his objections;

3d. By passage by vote of both houses, in due form, a veto by the President, a reconsideration by both houses, and a passage by two-thirds votes.

The Constitution substitutes this reconsideration and passage as an equivalent to the President's signature. After that, he and all other officers must execute the law, whether in fact constitutional or not.

For the President to refuse to execute a law duly passed, because he thought it unconstitutional, after he had vetoed it for that reason, would, in effect, be for him to execute his veto and leave the law unexecuted.

It may be said he may *do this at his peril*. True; but *that* peril is, to be impeached for violating his oath of office, as is now being done.

If, indeed, laws duly passed by Congress affecting generally the welfare of any considerable portion of the people had been commonly, or as a usage declared by the Supreme Court unconstitutional, and therefore inoperative, there might seem to be some palliation if not justification to the Executive to refuse to execute a law in order to have its constitutionality tested by the court.

It is possible to conceive of so flagrant a case of unconstitutionality as to be such shadow of justification to the Executive, provided one at the same time conceives an equally flagrant case of stupidity, ignorance, and imbecility, or worse, in the representatives of the people and in the Senate of the United States; but both conceptions are so rarely possible and absurd as not to furnish a ground of governmental action.

How stands the fact? Has the Supreme Court so frequently declared the laws of Congress in conflict with the Constitution as to afford the President just ground for belief, or hope even, that the court will do so in a given instance? I think I may safely assert as a legal fact, that since the first decision of the Supreme Court till the day of this arraignment no law passed by Congress affecting the general welfare has ever, by the judgment of that court, been set aside or held for naught because of unconstitutionality as the ground-work of its decision.

In three cases only has the judgment of that court been influenced by the supposed conflict between the law and the Constitution, and they were cases affecting the court itself and its own duties, and where the law seemed to interfere with its own prerogatives.

Touching privileges and prerogatives have been the shipwreck of many a wholesome law. It is the sore spot, the sensitive nerve of all tribunals, parliamentary or judicial.

The first case questioning the validity of a law of Congress is Hayburn's, (2 Dallas, 409,) where the court decided upon the unconstitutionality of the act of March 23, 1792, Statutes at Large, vol. 1, p. 244, which conferred upon the court the power to decide upon and grant certificates of invalid pensions. The court held that such power could not be conferred upon the court as an original jurisdiction, the court receiving all its original jurisdiction from the provisions of the Constitution. This decision would be nearly unintelligible were it not explained in a note to the case in United States *vs.* Ferreira, (13 Howard, p. 52,) reporting United States *vs.* Todd, decided February 17, 1794.

We learn, however, from both cases the cause of this unintelligibility of the decision in Hayburn's case. When the same question came up at the circuit court in New York, the judges being of opinion that the law could not be executed by them as judges, because it was unconstitutional, yet determined to obey it until the case could be adjudicated by the whole court. They therefore, not to violate the law, *did execute it as commissioners* until it was repealed, which was done the next year.

The judges on the circuit in Pennsylvania all united in a letter to the Executive, most humbly apologizing, with great regret, that their convictions of duty did not permit them to execute the law according to its terms, and took special care that this letter should accompany their decision, so that they might not be misunderstood.

Both examples it would have been well for this respondent to have followed before he undertook to set himself to violate an act of Congress.

The next case where the court decided upon any conflict between the Constitution and the law is Gordon *vs.* United States, tried in April, 1865, seventy-one years afterwards, two justices dissenting, without any opinion being delivered by the court.

The court here dismissed an appeal from the Court of Claims, alleging that, under the Constitution, no appellate jurisdiction could be exercised over the Court of Claims under an act of Congress which gave revisory power to the Secretary of the Treasury over a decision of the Court of Claims. This decision is little satisfactory, as it is wholly without argument or authority cited.

The next case is *ex parte* Garland, (4 Wallace, 333,) known as the Attorney's Oath case—where the court decided that an attorney was not an officer of the United States, and therefore might practice before that court without taking the test oath.

The reasoning of the court in that case would throw doubt on the constitutionality of the law of Congress, but the decision of the invalidity of the law was not necessary to the decision of the case, which did not command a unanimity in the court, as it certainly did not the assent of the bar.

Yet in this case it will be observed that the court made a rule requiring the oath to be administered to the attorneys in obedience of the law until it came before them in a cause duly brought up for decision. *The Supreme Court obeyed the law up to the time* it was set aside. They did not violate it to make a test case.

Here is another example to this respondent, as to his duty in the case, which he will wish he had followed, I may venture to say, when he hears the judgment of the Senate upon the impeachment now pending.

There are several other cases wherein the validity of acts of Congress have

been discussed before the Supreme Court, but none where the decision has turned on that point.

In Marbury *vs.* Madison, (1 Cranch, 137,) Chief Justice Marshall dismissed the case for want of jurisdiction, but took opportunity to deliver a chiding opinion against the administration of Jefferson before he did so.

In the Dred Scott case, so familiar to the public, the court decided it had no jurisdiction, but gave the government and the people a lecture upon their political duties.

In the case of Fisher *vs.* Blight, (2 Cranch, 358,) the constitutionality of a law was very much discussed, but was held valid by the decision of the court.

In United States *vs.* Coombs, (12 Peters, 72,) although the power to declare a law of Congress in conflict with the Constitution was claimed in the opinion of the court *arguendo,* yet the law itself was sustained.

The case of Pollard *vs.* Hagan, (3 Howard, 212,) and the two cases, Goodtitle *vs.* Kibbe, (9 Howard, 271;) Hallett *vs.* Beebe, (13 Howard, 25,) growing out of the same controversy, have been thought to impugn the validity of two private acts of Congress, but a careful examination will show that it was the *operation* and not the *validity* of the acts which came in question and made the basis of the decision.

Thus it will be seen that the Supreme Court, in three instances only, have apparently by its decision impugned the validity of an act of Congress because of a conflict with the Constitution, and in each case a question of the rights and prerogatives of the court or its officers has been in controversy.

The cases where the constitutionality of an act of Congress has been doubted in the *obiter dicta* of the court, but were not the basis of decisiont are open to other criticisms.

In Marbury *vs.* Madison, Chief Justice Marshall had just been serving as Secretary of State in an opposing administration to the one whose acts he was trying to overturn as Chief Justice.

In the Dred Scott case, Chief Justice Taney—selected by General Jackson to remove the deposits, because his bitter partisanship would carry him through where Duane halted and was removed—delivered the opinion of the court, whose *obiter dicta* fanned the flame of dissension which led to the civil war through which the people have just passed, and against that opinion the judgment of the country has long been recorded.

When *ex parte* Garland was decided, the country was just emerging from a conflict of arms, the passions and excitement of which had found their way upon the bench, and some of the judges, just coming from other service of the government and from the bar, brought with them opinions—But I forbear. I am treading on dangerous ground. Time has not yet laid its softening and correcting hand long enough upon this decision to allow me further to comment upon it in this presence.

Mr. President and Senators, can it be said that the possible doubts thrown on three or four acts of Congress, as to their constitutionality, during a judicial experience of seventy-five years—hardly one to a generation—is a sufficient warrant to the President of the United States to set aside and violate any act of Congress whatever, upon the plea that he believed the Supreme Court would hold it unconstitutional when a case involving the question should come before it, and especially one much discussed on its passage, to which the whole mind of the country was turned during the progress of the discussion, upon which he had argued with all his power his constitutional objections, and which, after careful reconsideration, had been passed over his veto.

Indeed, will you hear an argument as a Senate of the United States, a majority of whom voted for that very bill, upon its constitutionality in the trial of an executive officer for wilfully violating it before it had been doubted by any court?

Bearing upon this question, however, it may be said that the President removed Mr. Stanton for the very purpose of testing the constitutionality of this law before the courts, and the question is asked, Will you condemn him as for a crime for so doing? If this plea were a true one it ought not to avail; but it is a subterfuge. We shall show you that he has taken no step to submit the question to any court, although more than a year has elapsed since the passage of the act.

On the contrary, the President has recognized its validity and acted upon it in every department of the government, save in the War Department, and there except in regard to the head thereof solely. We shall show you he long ago caused all the forms of commissions and official bonds of all the civil officers of the government to be altered to conform to its requirement. Indeed, the fact will not be denied—nay, in the very case of Mr. Stanton, he suspended him under its provisions, and asked this very Senate, before whom he is now being tried for its violation, to pass upon the sufficiency of his reasons for acting under it in so doing according to its terms; yet, rendered reckless and mad by the patience of Congress under his usurpation of other powers, and his disregard of other laws, he boldly avows in his letter to the general of the army that he intends to disregard its provisions, and summons the commander of the troops of this department to seduce him from his duty so as to be able to command, in violation of another act of Congress, sufficient military power to enforce his unwarranted decrees.

The President knew, or ought to have known; his official adviser, who now appears as his counsel, could, and did tell him, doubtless, that he alone, as Attorney General, could file an information in the nature of a *quo warranto* to determine this question of the validity of the law.

Mr. Stanton, if ejected from office, was without remedy, because a series of decisions has settled the law to be that an ejected officer can not reinstate himself either by *quo warranto*, *mandamus*, or other appropriate remedy in the courts.

If the President had really desired solely to test the constitutionality of the law or his legal right to remove Mr. Stanton, instead of his defiant message to the Senate of the 21st of February, informing them of the removal, but not suggesting this purpose which is thus shown to be an afterthought, he would have said, in substance: "Gentlemen of the Senate, in order to test the constitutionality of the law entitled 'An act regulating the tenure of certain civil offices,' which I verily believe to be unconstitutional and void, I have issued an order of removal of E. M. Stanton from the office of Secretary of the Department of War. I felt myself constrained to make this removal lest Mr. Stanton should answer the information in the nature of a *quo warranto*, which I intend the Attorney General shall file at an early day, by saying that he holds the office of Secretary of War by the appointment and authority of Mr. Lincoln, which has never been revoked. Anxious that there shall be no collision or disagreement between the several departments of the government and the Executive, I lay before the Senate this message, that the reasons for my action, as well as the action itself, for the purpose indicated, may meet your concurrence." Had the Senate received such a message, the representatives of the people might never have deemed it necessary to impeach the President for such an act to insure the safety of the country, even if they had denied the accuracy of his legal positions.

On the contrary, he issued a letter of removal, peremptory in form, intended to be so in effect, ordered an officer of the army, Lorenzo Thomas, to take possession of the office and eject the incumbent, which he claimed he would do by force, even at the risk of inaugurating insurrection, civil commotion and war.

Whatever may be the decision of the legal question involved when the case comes before the final judicial tribunal, who shall say that such conduct of the

Executive under the circumstances, and in the light of the history of current events and his concomitant action, is not in Andrew Johnson a high crime and misdemeanor? Imagine, if it were possible, the consequence of a decision by the Senate in the negative—a verdict of not guilty upon this proposition.

A law is deliberately passed with all the form of legislative procedure, is presented to the President for his signature, is returned by him to Congress with his objections, is thereupon reconsidered, and by a yea and nay vote of three-quarters of the representatives of the people in the popular branch, and three-fourths of the senators representing the States in the higher branch, is passed again, notwithstanding the veto; is acquiesced in by the President, by all departments of the government conforming thereto for quite a year, no court having doubted its validity. Now its provisions are wilfully and designedly violated by the President with intent to usurp to himself the very powers which the law was designed to limit, for the purpose of displacing a meritorious officer whom the Senate just before had determined ought not and should not be removed; for which high-handed act the President is impeached in the name of all the people of the United States, by three-fourths of the House of Representatives, and presented at the bar of the Senate, and by the same Senate that passed the law, nay, more, by the very senators who, when the proceeding came to their knowledge, after a redeliberation of many hours, solemnly declared the act unlawful and in violation of the Constitution; that act of usurpation is declared *not* to be a high misdemeanor in office by their solemn verdict of not guilty upon their oaths.

Would not such a judgment be a conscious self-abnegation of the intelligent capacity of the representatives of the people in Congress assembled to frame laws for their guidance in accordance with the principles and terms of their Constitution and frame of their government?

Would it not be a notification—an invitation rather—standing to all time to any bold, bad, aspiring man to seize the liberties of the people which they had shown themselves incapable of maintaining or defending, and playing the *role* of a Cæsar or Napoleon here to establish a despotism, while this the last and greatest experiment of freedom and equality of right in the people, following the long line of buried republics, sinks to its tomb under the blows of usurped power from which free representative government shall arise to the light of a morn of resurrection *never more, never more forever!*

Article ninth charges that Major General Emory being in command of the military department of Washington, the President called him before him and instructed him that the act of March 2, 1867, which provides that all orders from the President shall be issued through the General of the army, was unconstitutional and inconsistent with his commission, with intent to induce Emory to take orders directly from himself, and thus hinder the execution of the civil tenure act and to prevent Mr. Stanton from holding his office of Secretary of War.

If the transaction set forth in this article stood alone we might well admit that doubts might arise as to the sufficiency of the proof. But the surroundings are so pointed and significant as to leave no doubt on the mind of an impartial man as to the intents and purposes of the President. No one would say that the President might not properly send to the commander of this department to make inquiry as to the disposition of his forces, but the question is with what intent and purpose did the President send for General Emory at the time he did? Time, here, is an important element of the act.

Congress had passed an act in March, 1867, restraining the President from issuing military orders save through the General of the army. The President had protested against that act. On the 12th of August, he had attempted to get possession of the War Office by the removal of the incumbent, but could only do so by appointing the General of the army thereto. Failing in his

attempt to get full possession of the office through the Senate, he had determined, as he admits, to remove Stanton at all hazards, and endeavored to prevail on the General to aid him in so doing. He declines. For that, the respondent quarrels with him, denounces him in the newspapers, and accuses him of bad faith and untruthfulness. Thereupon, asserting his prerogatives as Commander-in-chief, he creates a new military department of the Atlantic. He attempts to bribe Lieutenant General Sherman to take command of it, by promotion to the rank of general by brevet, trusting that his military services would compel the Senate to confirm him.

If the respondent can get a general by brevet appointed, he can then by simple order put him on duty according to his brevet rank and thus have a General of the army in command at Washington, through whom he can transmit his orders and comply with the act which he did not dare transgress, as he had approved it, and get rid of the hated General Grant. Sherman spurned the bribe. The respondent, not discouraged, appointed Major General George H. Thomas to the same brevet rank, but Thomas declined.

What stimulated the ardor of the President just at that time, almost three years after the war closed, but just after the Senate had reinstated Stanton, to reward military service by the appointment of generals by brevet? Why did his zeal of promotion take that form and no other? There were many other meritorious officers of lower rank desirous of promotion. The purpose is evident to every thinking mind. He had determined to set aside Grant, with whom he had quarrelled, either by force or fraud, either in conformity with or in spite of the act of Congress, and control the military power of the country. On the 21st of February (for all these events cluster nearly about the same point of time) he appoints Lorenzo Thomas Secretary of War and orders Stanton out of the office; Stanton refuses to go; Thomas is about the streets declaring that he will put him out by force, "kick him out"—he has caught his master's word.

On the evening of the 21st a resolution looking to impeachment is offered in the House.

The President, on the morning of the 22d, "as early as practicable," is seized with a sudden desire to know how many troops there were in Washington. What for, just then? Was that all he wanted to know? If so, his Adjutant General could have given him the official morning report, which would have shown the condition and station of every man. But that was not all. He directs the commander of the department to come as early as practicable. Why this haste to learn the number of troops? Observe, the order does not go through General Grant, as by law it ought to have done. General Emory not knowing what is wanted, of course obeyed the order as soon as possible. The President asked him if he remembered the conversation which he had with him when he first took command of the department as to the strength of the garrison of Washington, and the general disposition of troops in the department. Emory replied that "he did distinctly;" that was last September. Then, after explaining to him fully as to all the changes, the President asked for recent changes of troops. Emory denied they could have been made without the order going through him, and then, with soldierly frankness, (as he evidently suspected what the President was after,) said by law no order could come to him save through the General of the army, and that had been approved by the President and promulgated in a General Order, No. 17. The President wished to see it. It was produced. General Emory says, "Mr. President, I will take it as a great favor if you will permit me to call your attention to this order or act." Why a favor to Emory? Because he feared that he was to be called upon by the President to do something in contravention of that law. The President read it and said, "This is not in accordance with the Constitution of the United States, which makes me Commander-in-chief of the army and navy, or with the language of your commission." Emory then said, "That is not a matter

for the officers to determine. There was the order sent to us approved by him, and we were all governed by that order."

He said, "Am I to understand, then, that the President of the United States cannot give an order but through General Grant?" General Emory then made the President a short speech, telling him that the officers of the army had been consulting lawyers on the subject, Reverdy Johnson and Robert J. Walker, and were advised they were bound to obey that order. Said he, "I think it right to tell you the army are a unit on this subject." After a short pause, "seeing there was nothing more to say," General Emory left. What made all the officers consult lawyers about obeying a law of the United States? What influence had been at work with them? The course of the President. In his message to Congress in December he had declared that the time might come when he would resist a law of Congress by force. How could General Emory tell that in the judgment of the President that time had not come, and hence was anxious to assure the President that he could not oppose the law?

In his answer to the first article he asserts that he had fully come to the conclusion to remove Mr. Stanton at all events, notwithstanding the law and the action of the Senate; in other words, he intended to make, and did make, executive resistance to the law duly enacted. The consequences of such resistance he has told us in his message:

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Where an act has been passed according to the forms of the Constitution by the supreme legislative authority, and is regularly enrolled among the public statutes of the country, executive resistance to it, especially in times of high party excitement, would be likely to produce violent collision between the respective adherents of the two branches of the government. This would be simply civil war, and civil war must be resorted to only as the last remedy for the worst evils.

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It is true that cases may occur in which the Executive would be compelled to stand on its rights, and maintain them, regardless of all consequences.

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He admits, in substance, that he told Emory that the law was wholly unconstitutional, and, in effect, took away all his power as Commander-in-chief. Was it not just such a law as he had declared he would resist? Do you not believe that if General Emory had yielded in the least to his suggestions the President would have offered him promotion to bind him to his purposes, as he did Sherman and Thomas?

Pray remember that this is not the case of one gentleman conversing with another on moot questions of law; but it is the President, the Commander-in-chief, "the fountain of all honor and source of all power!" in the eye of a military officer, teaching that officer to disobey a law which he himself has determined is void, with the power to promote the officer if he finds him an apt pupil.

Is it not a high misdemeanor for the President to assume to instruct the officers of the army that the laws of Congress are not to be obeyed?

Article ten alleges that, intending to set aside the rightful authority and powers of Congress, and to bring into disgrace and contempt the Congress of the United States, and to destroy confidence in and to excite odium against Congress and its laws, he, Andrew Johnson, President of the United States, made divers speeches set out therein, whereby he brought the office of President into contempt, ridicule, and disgrace.

To sustain these charges, there will be put in evidence the short-hand notes of reporters in each instance, who took these speeches, or examined the sworn copies thereof, and one instance where the speech was examined and corrected by the private secretary of the President himself.

To the charges of this article the respondent answers that a convention of delegates, of whom he does not say, sat in Philadelphia for certain political purposes mentioned, and appointed a committee to wait upon the respondent as President of the United States; that they were received, and by their chairman,

the Hon. Reverdy Johnson, then and now a senator of the United States, addressed the respondent in a speech, a copy of which the respondent believes from a substantially correct report, is made a part of the answer; that the respondent made a reply to the address of the committee. While, however, he gives us in his answer a copy of the speech made to him by Mr. Reverdy Johnson, taken from a newspaper, he wholly omits to give us an authorized version of his own speech, about which he may be supposed to know quite as much, and thus saved us some testimony. He does not admit that the extracts from his speech in the article are correct, nor does he deny that they are so.

In regard to the speech at Cleveland, he, again, does not admit that the extracts correctly or justly present his speech; but, again, he does not deny that it does so far as the same is set out.

As to the speech at St. Louis, he does not deny that he made it—says only that he does not admit it, and requires, in each case, that the whole speech shall be proved. In that, I beg leave to assure him and the Senate, his wishes shall be gratified to their fullest fruition. The Senate shall see the performance, so far as is in our power to photograph the scene by evidence, on each of these occasions, and shall hear every material word that he said. His defence, however, to the article is that "he felt himself in duty bound to express opinions of and concerning the public character, conduct, views, purposes, motives, and tendencies of all men engaged in the public service, as well in Congress as otherwise," "and that for anything he may have said on either of these occasions he is justified under the constitutional right of freedom of opinion and freedom of speech, and is not subject to question, inquisition, impeachment, or inculpation in any manner or form whatsoever;" he denies, however, that by reason of any matter in said article or its specifications alleged he has said or done anything indecent or unbecoming in the Chief Magistrate of the United States, or tending to bring his high office into contempt, ridicule, or disgrace.

The issue, then, finally, is this: that those utterances of his, in the manner and from in which they are alleged to have been made, and under the circumstances and at the time they were made, are decent and becoming the President of the United States, and do not tend to bring the office into ridicule and disgrace.

We accept the issues. They are two:

First. That he has the right to say what he did of Congress in the exercise of freedom of speech; and, second, that what he did say in those speeches was a highly gentlemanlike and proper performance in a citizen, and still more becoming in a President of the United States.

Let us first consider the graver matter of the assertion of the right to cast contumely upon Congress; to denounce it as a "body hanging on the verge of the government;" "pretending to be a Congress when in fact it was not a Congress;" "a Congress pretending to be for the Union when its every step and act tended to perpetuate disunion," "and make a disruption of the States inevitable;" "a Congress in a minority assuming to exercise power which, if allowed to be consummated, would result in despotism and monarchy itself;" "a Congress which had done everything to prevent the union of the States;" "a Congress factious and domineering;" "a radical Congress, which gave origin to another rebellion;" "a Congress upon whose skirts was every drop of blood that was shed in the New Orleans riots."

You will find these denunciations had a deeper meaning than mere expressions of opinion. It may be taken as an axiom in the affairs of nations that no usurper has ever seized upon the legislature of his country until he has familiarized the people with the possibility of so doing by vituperating and decrying it. Denunciatory attacks upon the legislature have always preceded, slanderous abuse of the individuals composing it have always accompanied a seizure by a despot of the legislative power of a country.

Two memorable examples in modern history will spring to the recollection of every man. Before Cromwell drove out by the bayonet the Parliament of England, he and his partisans had denounced it, derided it, decried it, and defamed it, and thus brought it into ridicule and contempt. He vilified it with the same name which it is a significant fact the partisans of Johnson, by a concerted cry, applied to the Congress of the United States when he commenced his memorable pilgrimage and crusade against it. It is a still more significant fact that the justification made by Cromwell and by Johnson for setting aside the authority of Parliament and Congress respectively was precisely the same, to wit: that they were elected by part of the people only. When Cromwell, by his soldiers, finally entered the hall of Parliament to disperse its members, he attempted to cover the enormity of his usurpation by denouncing this man personally as a libertine, that as a drunkard, another as the betrayer of the liberties of the people. Johnson started out on precisely the same course, but forgetting the parallel, too early he proclaims this patriot an assassin, that statesman a traitor; threatens to hang that man whom the people delight to honor, and breathes out "threatenings and slaughter" against this man whose services in the cause of human freedom has made his name a household word wherever the language is spoken. There is, however, an appreciable difference between Cromwell and Johnson, and there is a like difference in the results accomplished by each.

When Bonaparte extinguished the legislature of France, he waited until through his press and his partisans, and by his own denunciations, he brought its authority into disgrace and contempt; and when, finally, he drove the council of the nation from their chamber, like Cromwell, he justified himself by personal abuse of the individuals themselves as they passed by him.

That the attempt of Andrew Johnson to overthrow Congress has failed, is because of the want of ability and power, not of malignity and will.

We are too apt to overlook the danger which may come from words: "We are inclined to say that is only *talk*—wait till some *act* is done, and then it will be time to move. But words may be, and sometimes are, things—living, burning things that set a world on fire."

As a most notable instance of the power of words, look at the inception of the rebellion through which we have just passed. For a quarter of a century the nation took no notice of the talk of disunion and secession which was heard in Congress and on the "stump" until in the South a generation was taught them by word, and the word suddenly burst forth into terrible, awful war. Does any one doubt that if Jackson had hanged Calhoun in 1832 for talking nullification and secession, which was embryo treason, the cannon of South Carolina against Fort Sumter would ever have been heard with all their fearful and deadly consequences? Nay, more; if the United States officers, senators and representatives had been impeached or disqualified from office in 1832 for advocating secession on the "stump," as was done in 1862 by Congress, then our sons and brothers, now dead in battle, or starved in prison, had been alive and happy, and a peaceful solution of the question of slavery had been found.

Does any one doubt that if the intentions of the respondent could have been carried out, and his denunciations had weakened the Congress in the affections of the people, so that those who had in the North sympathized with the rebellion could have elected such a minority even, of the representatives to Congress as, together with those sent up from the governments organized by Johnson in the rebellious States, they should have formed a majority of both or either house of Congress, that the President would have recognized such body as the legitimate Congress, and attempted to carry out its decrees by the aid of the army and navy and the treasury of the United States, over which he now claims such unheard-of and illimitable powers, and thus lighted the torch of civil war?

In all earnestness, Senators, I call each one of you upon his conscience to say

whether he does not believe by a preponderance of evidence drawn from the acts of the respondent since he has been in office, that if the people had not been, as they ever have been, true and loyal to their Congress and themselves, such would not have been the result of these usurpations of power in the Executive?

Is it, indeed, to be seriously argued here that there is a constitutional right in the President of the United States, who, during his official life, can never lay aside his official character, to denounce, malign, abuse, ridicule, and contemn, openly and publicly, the Congress of the United States—a co-ordinate branch of the government?

It cannot fail to be observed that the President (shall I dare to say his counsel, or are they compelled by the exigencies of their defence,) have deceived themselves as to the *gravamen* of the charge in this article? It does not raise the question of freedom of speech, but of propriety and decency of speech and conduct in a high officer of the government.

Andrew Johnson, the private citizen, as I may reverently hope and trust he soon will be, has the full constitutional right to think and speak what he pleases, in the manner he pleases, and where he pleases, provided always he does not bring himself within the purview of the common law offences of being a common railer and brawler, or a common scold, which he may do, (if a male person is ever liable to commit that crime;) but the dignity of station, the proprieties of position, the courtesies of office, all of which are a part of the common law of the land, require the President of the United States to observe that gravity of deportment, that fitness of conduct, that appropriateness of demeanor, and those amenities of behavior which are a part of his high official functions. He stands before the youth of the country the exemplar of all that is of worth in ambition, and all that is to be sought in aspiration; he stands before the men of the country as the grave magistrate who occupies, if he does not fill, the place once honored by Washington; nay, far higher and of greater consequence, he stands before the world as the representative of free institutions, as the type of man whom the suffrages of a free people have chosen as their chief. He should be the living evidence of how much better, higher, nobler, and more in the image of God, is the elected ruler of a free people than a hereditary monarch, coming into power by the accident of birth; and when he disappoints all these hopes and all these expectations, and becomes the ribald, scurrilous blasphemer, bandying epithets and taunts with a jeering mob, shall he be heard to say that such conduct is not a high misdemeanor in office? Nay, disappointing the hopes, causing the cheek to burn with shame, exposing to the taunts and ridicule of every nation the good name and fame of the chosen institutions of thirty millions of people, is it not the highest possible crime and misdemeanor in office? and under the circumstances is the *gravamen* of these charges. The words are not alleged to be either false or defamatory, because it is not within the power of any man, however high his official position, in effect to slander the Congress of the United States, in the ordinary sense of that word, so as to call on Congress to answer as to the truth of the accusation. We do not go in, therefore, to any question of truth or falsity. We rest upon the scandal of the scene. We would as soon think, in the trial of an indictment against a termagant as a common scold, of summoning witnesses to prove that what she said was not true. It is the noise and disturbance in the neighborhood that is the offence, and not a question of the provocation or irritation which causes the outbreak.

At the risk of being almost offensive, but protesting that if so it is not my fault but that of the person whose acts I am describing, let me but faintly picture to you the scene at Cleveland and St. Louis.

It is evening; the President of the United States on a journey to do homage at the tomb of an illustrious statesman, accompanied by the head of the army and navy and Secretary of State, has arrived in the great central city of the continent. He has been welcomed by the civic authorities. He has been

escorted by a procession of the benevolent charitable societies and citizens and soldiers to his hotel. He has returned thanks in answer to address of the mayor to the citizens who has received him. The hospitality of the city has provided a banquet for him and his suite, when he is again expected to address the chosen guests of the city where all things may be conducted in decency and in order. While he was resting, as one would have supposed he would have wished to do from the fatigue of the day, a noisy crowd of men and boys, washed and unwashed, drunk and sober, black and white, assemble in the street, who make night hideous by their bawling; quitting the drawing room without the advice of his friends, the President of the United States rushes forth on to the balcony of the hotel to address what proves to have been a mob, and this he calls in his answer a "fit occasion on which he is held to the high duty of expressing opinions of and concerning the legislation of Congress, proposed or completed, in respect of its wisdom, expediency, justice, worthiness, objects, purposes, and public and political motives and tendencies."

Observe now, upon this "fit occasion," like in all respects to that at Cleveland, when the President is called upon by the constitutional requirements of his office to expound "the wisdom, expediency, justice, worthiness, objects, purposes, and tendencies of the acts of Congress," what he says, and the manner in which he says it. Does he speak with the gravity of a Marshall when expounding constitutional law? Does he use the polished sentences of a Wirt? Or, failing in these, which may be his misfortune, does he, in plain, homely words of truth and soberness, endeavor to instruct the men and youth before him in their duty to obey the laws and to reverence their rulers, and to prize their institutions of government? Although he may have been mistaken in the aptness of the occasion for such didactic instruction, still good teaching is never thrown away. He shows, however, by his language, as he had shown at Cleveland, that he meant to adapt himself to the occasion. He has hardly opened his mouth, as we shall show you, when some one in the crowd cries, "How about our British subjects?"

The Chief Executive, supported by his Secretary of State, so that all the foreign relations and diplomatic service were fully represented, with a dignity that not even his counsel can appreciate, and with an amenity which must have delighted Downing street, answers: "We will attend to John Bull after awhile, so far as that is concerned." The mob, ungrateful, receive this bit of "expression of opinion upon the justice, worthiness, objects, purposes, and public and political motives and tendencies" of our relations with the kingdom of Great Britain, as they fell from the honored lips of the President of the United States with *laughter*, and the more unthinking *with cheers*.

Having thus disposed of our diplomatic relations with the first naval and commercial nation on earth, the President next proceeds to "express his opinion in manner aforesaid and for the purposes aforesaid" to this noisy mob on the subject of the riots upon which his answer says, "it is the constitutional duty of the President to express opinions for the purposes aforesaid." A voice calls out "New Orleans! go on!" After a graceful exordium the President expresses his high opinion that a massacre, wherein his pardoned and unpardoned rebel associates and friends deliberately shot down and murdered unarmed Union men without provocation, even Horton, the minister of the living God, as his hands were raised to the Prince of Peace, praying in the language of the great martyr, "Father forgive them for they know not what they do," was the result of the laws passed by the legislative department of your government in the words following, that is to say:

"If you will take up the riot at New Orleans and trace it back to its source, or to its immediate cause, you will find out who was responsible for the blood that was shed there."

"If you take up the riot at New Orleans and trace it back to the radical Congress"—

This, as we might expect, was received by the mob, composed, doubtless, in

large part of unrepentant rebels, with great cheering and cries of "bully." It was "bully," if that means encouraging for them to learn on the authority of the President of the United States that they might shoot down Union men and patriots, and lay the sin of murder upon the Congress of the United States; and this was another bit of "opinion" which the counsel say it was the high duty of the President to express upon the justice, the worthiness, objects, "purposes and public and political motives, and tendencies of the legislation of your Congress."

After some further debate with the mob some one, it seems, had called out "traitor!" The President of the United States, on this fitting, constitutional occasion, immediately took this as personal, and replies to it, "Now, my countrymen, it is very easy to indulge in epithets, it is very easy to call a man Judas, and cry out traitor, but when he is called upon to give arguments and facts he is very often found wanting."

What were the "facts that were found wanting," which in the mind of the President prevented him from being a Judas Iscariot? He shall state the "wanting facts in his own language on this occasion when he is exercising his high constitutional prerogative."

"Judas Iscariot! Judas! There was a Judas once, one of the twelve apostles. Oh! yes, the twelve apostles had a Christ. [A voice, 'and a Moses, too;' great laughter.] The twelve apostles had a Christ, and he never could have had a Judas unless he had had the twelve apostles. If I have played the Judas, who has been my Christ that I have played the Judas with? Was it Thad. Stevens? Was it Wendell Phillips? Was it Charles Sumner?"

If it were not that the blasphemy shocks us we should gather from all this that it dwelt in the mind of the President of the United States that the only reason why he was not a Judas was that he had not been able to find a Christ toward whom to play the Judas.

It will appear that this bit of "opinion," given in pursuance of his constitutional obligation, was received with cheers and hisses. Whether the cheers were that certain patriotic persons named by him might be hanged, or the hissing was because of the inability of the President to play the part of Judas, for the reason before stated, I am sorry to say the evidence will not inform us.

His answer makes the President say that it is his "duty to express opinions concerning the public characters, and the conduct, views, purposes, objects, motives, and tendencies of all men engaged in the public service."

Now, as "the character, motives, tendencies, purposes, objects, and views" of Judas alone had "opinions expressed" about them on this "fit occasion," (although he seemed to desire to have some others, whose names he mentioned, hanged,) I shall leave his counsel to inform you what were the "public services" of Judas Iscariot, to say nothing of Moses, which it was the constitutional duty and right of the President of the United States to discuss on this particularly "fit occasion."

But I will not pursue this revolting exhibition any further.

I will only show you at Cleveland the crowd and the President of the United States, in the darkness of night, bandying epithets with each other, crying, "Mind your dignity, Andy;" "Don't get mad, Andy;" "Bully for you Andy." I hardly dare shock, as I must, every sense of propriety by calling your attention to the President's allusion to the death of the sainted martyr, Lincoln, as the means by which he attained his office, and if it can be justified in any man, public or private, I am entirely mistaken in the commonest proprieties of life. The President shall tell his own story:

"There was, two years ago, a ticket before you for the presidency. I was placed upon that ticket with a distinguished citizen now no more. [Voices, 'Its a pity;' 'Too bad;' 'Unfortunate.'] Yes, I know there are some who say 'unfortunate.' Yes, unfortunate for some that God rules on high and deals in justice. [Cheers.] Yes, unfortunate. The

ways of Providence are mysterious and incomprehensible, controlling all who exclaim 'unfortunate.'"

Is it wonderful at all that such a speech, which seems to have been unprovoked and coolly uttered, should have elicited the single response from the crowd, "Bully for you?"

I go no further. I might follow this *ad nauseam*. I grant the President of the United States further upon this disgraceful scene the mercy of my silence. Tell me now, who can read the accounts of this exhibition, and reflect that the result of our institutions of government has been to place such a man, so lost to decency and propriety of conduct, so unfit, in the high office of ruler of this nation, without blushing and hanging his head in shame as the finger of scorn and contempt for republican democracy is pointed at him by some advocate of monarchy in the old world. What answer have you when an intelligent foreigner says, Look! see! this is the culmination of the ballot unrestrained in the hands of a free people, in a country where any man may aspire to the office of President. Is not our government of a hereditary king or emperor a better one, where at least our sovereign is born a gentleman, than to have such a *thing* as this for a ruler?

Yes, we have an answer. We can say *this man* was not the choice of the people for the President of the United States. He was thrown to the surface by the whirlpool of civil war, and carelessly, we grant, elected to the second place in the government, without thought that he might ever fill the first.

By murder most foul he succeeded to the Presidency, and is the elect of an assassin to that high office, and not of the people. "It was a grievous fault, and grievously have we answered it;" but let me tell you, oh, advocate of monarchy! that our frame of government gives us a remedy for such a misfortune, which yours, with its divine right of kings, does not. We can remove him—as we are about to do—from the office he has disgraced by the sure, safe, and constitutional method of impeachment; while your king, if he becomes a buffoon, or a jester, or a tyrant, can only be displaced through revolution, bloodshed, and civil war.

This—this, oh, monarchist!—is the crowning glory of our institutions, because of which, if for no other reason, our form of government claims precedence over all other governments of the earth.

Article 11 charges that the President, having denied in a public speech on the 18th of August, 1866, at Washington, that the 39th Congress was authorized to exercise legislative power, and denying that the legislation of said Congress was valid or obligatory upon him, or that it had power to propose certain amendments to the Constitution, did attempt to prevent the execution of the act entitled "An act regulating the tenure of certain civil offices," by unlawfully attempting to devise means by which to prevent Mr. Stanton from resuming the functions of the office of Secretary of the Department of War, notwithstanding the refusal of the Senate to concur in his suspension, and that he also contrived means to prevent the execution of an act of March 2, 1867, which provides that all military orders shall be issued through the General of the army of the United States, and also another act of the same 2d of March, commonly known as the reconstruction act.

To sustain this charge, proof will be given of his denial of the authority of Congress as charged; also his letter to the General of the army, in which he admits that he endeavored to prevail on him by promises of pardon and indemnity to disobey the requirements of the tenure-of-office act, and to hold the office of Secretary of War against Mr. Stanton after he had been reinstated by the Senate; that he chided the General for not acceding to his request, and declared that had he known that he (Grant) would not have acceded to his wishes he would have taken other means to prevent Mr. Stanton from resuming his office; his admission in his answer that his purpose was from the first suspension of Mr. Stanton,

August 12, 1867, to oust him from his office notwithstanding the decision of the Senate under the act; his order to General Grant to refuse to recognize any order of Mr. Stanton purporting to come from himself after he was so reinstated, and his order to General Thomas as an officer of the army of the United States to take possession of the War Office, not transmitted as it should have been through the General of the army, and the declarations of General Thomas that, as an officer of the army of the United States, he felt bound to obey the orders of the Commander-in-chief.

To prove further the purpose and intent with which his declarations were made, and his denial of the power of Congress to propose amendments to the Constitution, and as one of the means employed by him to prevent the execution of the acts of Congress, we shall show he has opposed and hindered the pacification of the country and the return of the insurrectionary States to the Union, and has advised the legislature of the State of Alabama not to adopt the constitutional amendment known as the 14th article, when appealed to to know if it was best for the legislature so to do; and this, too, after that amendment had been adopted by a majority of the loyal State legislatures, and after, in the election of 1866, it had been sustained by an overwhelming majority of the loyal people of the United States. I do not propose to comment further on this article, because, if the Senate shall have decided that all the acts charged in the preceding articles are justified by law, then so large a part of the intent and purposes with which the respondent is charged in this article would fail of proof, that it would be difficult to say whether he might not, with equal impunity, violate the laws known as the reconstruction acts, which, in his message, he declares "as plainly unconstitutional as any that can be imagined." If that be so, why should he not violate them? If, therefore, the judgment of the Senate shall sustain us upon the other articles, we shall take judgment upon this by confession, as the respondent declares in the same message that he does not intend to execute them.

To the bar of this High Tribunal, invested with all its great power and duties, the House of Representatives has brought the President of the United States by the most solemn form of accusation, charging him with high crimes and misdemeanors in office, as set forth in the several articles which I have thus feebly presented to your attention. Now, it seems necessary that I should briefly touch upon and bring freshly to your remembrance the history of some of the events of his administration of affairs in his high office, in order that the intents with which and the purposes for which the respondent committed the acts alleged against him may be fully understood.

Upon the first reading of the articles of impeachment, the question might have arisen in the mind of some Senator, why are these acts of the President only presented by the House when history informs us that others equally dangerous to the liberties of the people, if not more so, and others of equal usurpation of powers, if not greater, are passed by in silence?

To such possible inquiry we reply: That the acts set out in the first eight articles are but the culmination of a series of wrongs, malfeasances and usurpations committed by the respondent, and therefore need to be examined in the light of his precedent and concomitant acts to grasp their scope and design. The last three articles presented show the perversity and malignity with which he acted, so that the man as he is known to us may be clearly spread upon record to be seen and known of all men hereafter.

What has been the respondent's course of administration? For the evidence we rely upon common fame and current history as sufficient proof. By the common law, common fame, "*si oriatur apud bonos et graves*," was ground of indictment even; more than 240 years ago it was determined in Parliament "that common fame is a good ground for the proceeding of this house, either to

inquire of here or to transmit the complaint, if the house find cause, to the King or Lords."

Now, is it not well known to all good and grave men (*"bonos et graves"*) that Andrew Johnson entered the office of President of the United States at the close of the armed rebellion, making loud denunciation, frequently and everywhere, that traitors ought to be punished, and treason should be made odious; that the loyal and true men of the South should be fostered and encouraged; and, if there were but few of them, to such only should be given in charge the reconstruction of the disorganized States?

Do not all men know that soon afterwards he changed his course, and only made treason odious, so far as he was concerned, by appointing traitors to office and by an indiscriminate pardon of all who "came in unto him?" Who does not know that Andrew Johnson initiated, of his own will, a course of reconstruction of the rebel States, which at the time he claimed was provisional only, and until the meeting of Congress and its action thereon? Who does not know that when Congress met and undertook to legislate upon the very subject of reconstruction, of which he had advised them in his message, which they alone had the constitutional power to do, Andrew Johnson last aforesaid again changed his course, and declared that Congress had no power to legislate upon that subject; that the two houses had only the power *separately* to judge of the qualifications of the members who might be sent to each by rebellious constituencies, acting under State organizations which Andrew Johnson had called into existence by his late *fiat*, the electors of which were voting by his permission and under his limitations? Who does not know that when Congress, assuming its rightful power to propose amendments to the Constitution, had passed such an amendment, and had submitted it to the States as a measure of pacification, Andrew Johnson advised and counselled the legislatures of the States lately in rebellion, as well as others, to reject the amendment, so that it might not operate as a law, and thus establish equality of suffrage in all the States, and equality of right in the members of the electoral college, and in the number of the representatives to the Congress of the United States?

Lest any one should doubt the correctness of this piece of history or the truth of this common fame, we shall show you that while the legislature of Alabama was deliberating upon the reconsideration of the vote whereby it had rejected the constitutional amendment, the fact being brought to the knowledge of Andrew Johnson and his advice asked, he, by a telegraphic message under his own hand, *here to be produced*, to show his intent and purposes, advised the legislature against passing the amendment, and to remain firm in their opposition to Congress. We shall show like advice of Andrew Johnson upon the same subject to the legislature of South Carolina, and this, too, in the winter of 1867, after the action of Congress in proposing the constitutional amendment had been sustained in the previous election by an overwhelming majority. Thus we charge that Andrew Johnson, President of the United States, not only endeavors to thwart the constitutional action of Congress and bring it to naught, but also to hinder and oppose the execution of the will of the loyal people of the United States expressed in the only mode by which it can be done, through the ballot-box, in the election of their representatives. Who does not know that from the hour he began these, his usurpations of power, he everywhere denounced Congress, the legality and constitutionality of its action, and defied its legitimate powers, and, for that purpose, announced his intentions and carried out his purpose, as far as he was able, of removing every true man from office who sustained the Congress of the United States? And it is to carry out this plan of action that he claims the unlimited power of removal, for the illegal exercise of which he stands before you this day. Who does not know that, in pursuance of the same plan, he used his veto power indiscriminately to prevent the passage of wholesome laws, enacted for the pacification of

the country? and, when laws were passed by the constitutional majority over his vetoes, he made the most determined opposition, both open and covert, to them, and, for the purpose of making that opposition effectual, he endeavored to array and did array all the people lately in rebellion to set themselves against Congress and against the true and loyal men, their neighbors, so that murders, assassinations, and massacres were rife all over the southern States, which he encouraged by his refusal to consent that a single murderer be punished, though thousands of good men have been slain; and further, that he attempted by military orders to prevent the execution of acts of Congress by the military commanders who were charged therewith. These and his concurrent acts show conclusively that his attempt to get the control of the military force of the government, by the seizing of the Department of War, was done in pursuance of his general design, if it were possible, to overthrow the Congress of the United States; and he now claims by his answer the right to control at his own will, for the execution of this very design, every officer of the army, navy, civil, and diplomatic service of the United States. He asks you here, Senators, by your solemn adjudication to confirm him in that right, to invest him with that power, to be used with the intents and for the purposes which he has already shown.

The responsibility is with you; the safeguards of the Constitution against usurpation are in your hands; the interests and hopes of free institutions wait upon your verdict. The House of Representatives has done its duty. We have presented the facts in the constitutional manner; we have brought the criminal to your bar, and demand judgment at your hands for his so great crimes.

Never again, if Andrew Johnson go quit and free this day, can the people of this or any other country by constitutional checks or guards stay the usurpations of executive power.

I speak, therefore, not the language of exaggeration, but the words of truth and soberness, that the future political welfare and liberties of all men hang trembling on the decision of the hour.